

EXHIBIT A

09:28:19 1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE NORTHERN DISTRICT OF CALIFORNIA

3 OAKLAND DIVISION

4 UNITED STATES OF AMERICA,) CR-23-469-JSW-1
5) CR-23-469-JSW-2
6 PLAINTIFF,)
7) OAKLAND, CALIFORNIA
8 VS.)
9) FEBRUARY 10, 2025
10 MORTEZA AMIRI AND DEVON)
11 CHRISTOPHER WENGER,) PAGES 1-47
12)
13 DEFENDANTS.)
14)
15)
16)
17)
18)
19)
20)
21)
22)
23)
24)
25)

11 TRANSCRIPT OF PROCEEDINGS
12 BEFORE THE HONORABLE JEFFREY S. WHITE
13 UNITED STATES DISTRICT JUDGE

14 A P P E A R A N C E S:

15 FOR THE GOVERNMENT: BY: AJAY K KRISHNAMURTHY
16 ALEXANDRA SHEPARD
17 ERIC CHENG
18 U.S. ATTORNEY'S OFFICE
NORTHERN DISTRICT OF CALIFORNIA
450 GOLDEN GATE AVENUE, 11TH FLOOR
SAN FRANCISCO, CA 94102

19 FOR THE GOVERNMENT: BY: ALETHEA M. SARGENT
20 U.S. ATTORNEY'S OFFICE
21 NORTHERN DISTRICT OF CALIFORNIA
1301 CLAY STREET, #340S
OAKLAND, CA 94612

22 APPEARANCES CONTINUED ON NEXT PAGE

23 REPORTED REMOTELY BY: SUMMER FISHER, CSR, CRR
24 CERTIFICATE NUMBER 13185

25 PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY
TRANSCRIPT PRODUCED WITH COMPUTER

1 APPEARANCES (CONT.'D) :

2 FOR THE DEFENDANT: BY: PAUL Q. GOYETTE
3 AMIRI JANELLE CRANDELL
4 GOYETTE, RUANO & THOMPSON
2366 GOLD MEADOW WAY, SUITE 200
GOLD RIVER, CA 956705 FOR THE DEFENDANT: BY: NICOLE RACHEL CASTRONOVO
6 WENGER SEKI, NISHIMURA & WATASE, PLC
7 600 WILSHIRE BLVD., SUITE 1250
LOS ANGELES, CA 900178
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SAN JOSE, CALIFORNIA

FEBRUARY 10, 2025

2

P R O C E E D I N G S

3

(COURT CONVENED AT 9:35 A.M.)

09:35:36 4

THE CLERK: CALLING CRIMINAL CASE 23-469-JSW-1,

09:35:42 5

23-469-JSW-2. USA VERSUS MORTEZA AMIRI, U.S. VERSUS DEVON

09:35:51 6

CHRISTOPHER WENGER.

09:35:51 7

PARTIES, PLEASE STEP FORWARD AND STATE YOUR APPEARANCES.

09:35:54 8

MR. KRISHNAMURTHY: GOOD MORNING.

09:35:57 9

AJAY KRISHNAMURTHY, ALETHEA SARGENT, ERIC CHENG AND

09:35:58 10

ALEX SHEPARD FOR THE UNITED STATES.

09:35:59 11

THE COURT: GOOD MORNING.

09:36:00 12

MS. LOPES: GOOD MORNING.

09:36:02 13

NICOLE LOPES ON BEHALF OF DEVON WENGER.

09:36:03 14

THE COURT: GOOD MORNING.

09:36:05 15

MS. CRANDELL: GOOD MORNING, YOUR HONOR.

09:36:07 16

JANELLE CRANDELL ON BEHALF OF MR. MORTEZA AMIRI.

09:36:10 17

THE COURT: GOOD MORNING.

09:36:11 18

MR. GOYETTE: GOOD MORNING, YOUR HONOR.

09:36:12 19

PAUL GOYETTE ON BEHALF OF MORTEZA AMIRI.

09:36:15 20

THE COURT: GOOD MORNING.

09:36:15 21

COUNSEL, YOU MAY BE SEATED. IF I NEED TO HAVE YOU ADDRESS

09:36:18 22

THE COURT, I WILL CERTAINLY LET YOU KNOW.

09:36:22 23

SO THOSE OF YOU WHO MAY NOT HAVE BEEN AWARE OR ARE NOT

09:36:27 24

AWARE OF HOW THE COURT CONDUCTS ITS PRETRIAL CONFERENCES AND

09:36:33 25

WHAT IT SEEKS TO ACHIEVE IN THESE CONFERENCES, THIS CONFERENCE

09:36:38 1 IS INTENDED TO BE AS SUBSTANTIVE AS POSSIBLE IN ORDER TO

09:36:41 2 RESOLVE AS MANY ISSUES AS POSSIBLE PRIOR TO TRIAL SO AS NOT TO

09:36:47 3 TAKE UP OR WASTE ANY OF THE JURY'S TIME.

09:36:52 4 SO THAT BECAUSE THE COURT REQUIRES IN ITS LOCAL STANDING

09:36:56 5 ORDERS, SUBSTANTIAL SUBMISSIONS WHICH THE COURT HAD THE

09:37:03 6 OPPORTUNITY TO CONSIDER, THIS WILL BE MORE OF A SOLILOQUY THAN

09:37:09 7 A COLLOQUY.

09:37:11 8 AND SO FIRST OF ALL, THE COURT DIRECTS THE PARTIES TO

09:37:15 9 REVIEW THE COURT'S GUIDELINES FOR TRIAL IN CRIMINAL CASES

09:37:21 10 BEFORE TRIAL. AND THE COURT REMINDS THE PARTIES THAT CIVILITY

09:37:27 11 IS PARTICULARLY IMPORTANT IN FRONT OF THE COURT, BUT ESPECIALLY

09:37:30 12 IN FRONT OF THE JURY. WE DO NOT WANT ANY SIDE COMMENTS OR

09:37:38 13 SPEAKING OBJECTIONS, AND I WILL TALK ABOUT THAT LATER ON IN THE

09:37:41 14 PROCEEDINGS.

09:37:43 15 I WANT TO SORT OF START REVERSE CHRONOLOGICAL ORDER WITH

09:37:50 16 THE MOST RECENT FILING THAT WAS FILED BY MR. WENGER'S COUNSEL

09:37:58 17 WHICH IS A DEMAND FOR INSPECTION OF -- AN IN CAMERA INSPECTION

09:38:02 18 OF THE ENTIRE PROSECUTION'S FILE.

09:38:05 19 LET ME ASK MR. KRISHNAMURTHY, HAVE YOU SEEN THAT YET?

09:38:09 20 MR. KRISHNAMURTHY: WE HAVE NOT. WE WERE NOT SERVED

09:38:12 21 WITH THAT.

09:38:13 22 THE COURT: ALL RIGHT. HAVE A SEAT.

09:38:16 23 OBVIOUSLY I'M NOT GOING TO REQUIRE YOU TO RESPOND TO

09:38:21 24 SOMETHING YOU HAVEN'T SEEN, MUCH LESS SOMETHING EVEN IF YOU HAD

09:38:24 25 SEEN IT, IT WOULD HAVE BEEN AT A VERY LATE DATE.

09:38:26 1 SO JUST FOR THE RECORD, AS I MENTION, THE COURT HAS
09:38:29 2 RECEIVED A DEMAND FROM DEFENDANT WENGER FOR THE COURT TO
09:38:33 3 CONDUCT AN IN CAMERA REVIEW OF THE PROSECUTION FILE TO ENSURE
09:38:38 4 IT HAS COMPLIED WITH ITS BRADY OBLIGATIONS.

09:38:43 5 FIRST OF ALL, COUNSEL FOR MR. WENGER SHOULD FILE THE
09:38:45 6 MOTION ON THE DOCKET SO THAT IT MAY BE PRESERVED FOR THE
09:38:52 7 RECORD. HOWEVER, AND I WILL TALK ABOUT THIS MORE AS WE GO
09:38:57 8 FORWARD BECAUSE THIS SEEMS TO BE A CONTINUING PROBLEM, COUNSEL
09:39:00 9 SHOULD NOTE THAT THESE ITERATIVE AND LATE BREAKING MOTIONS ARE
09:39:04 10 DISRUPTIVE AND INAPPROPRIATE. AND ONCE AGAIN, COUNSEL'S
09:39:08 11 CONTENTION OF FACTS ARE NOT APPROPRIATELY SUPPORTED BY A
09:39:13 12 DECLARATION OR AFFIDAVIT AS REQUIRED.

09:39:17 13 THE COURT WILL NOT REVIEW THE PROSECUTION'S FILE IN
09:39:20 14 CAMERA. BRADY IS NOT A DISCOVERY TOOL, IT IS AN OBLIGATION
09:39:24 15 IMPOSED ON THE PROSECUTION TO TURN OVER EXONERATORY EVIDENCE.

09:39:30 16 NOW THAT SAID, LET ME JUST ASK SINCE I HAVE GOVERNMENT
09:39:33 17 COUNSEL HERE, HAS THE GOVERNMENT COMPLIED WITH ITS OBLIGATIONS
09:39:40 18 UNDER BRADY AND GIGLIO?

09:39:44 19 MR. KRISHNAMURTHY: WE HAVE AND WE CONTINUE TO
09:39:47 20 GENERATE INFORMATION, WE WILL CONTINUE TO DO SO.

09:39:50 21 THE COURT: ALL RIGHT. THANK YOU.

09:39:52 22 AND SO I WOULD -- TO THE EXTENT THAT DEFENSE COUNSEL
09:39:58 23 BELIEVES THAT PROSECUTION HAS EVIDENCE OR HAS THE ABILITY TO
09:40:05 24 OBTAIN EVIDENCE SUCH THAT IT'S CONSTRUCTIVE IN THE
09:40:09 25 GOVERNMENT'S POSSESSION UNDER APPLICABLE LAW, IT SHOULD MEET

09:40:14 1 AND CONFER WITH GOVERNMENT COUNSEL AND DISCUSS WITH THEM
09:40:20 2 PERHAPS WHAT THE SUBSTANCE OF THEIR MOTION AND WHETHER THE
09:40:23 3 GOVERNMENT HAS SUCH A THING, AND THEN REMEMBER AGAIN BRADY IS
09:40:27 4 NOT A DISCOVERY TOOL, IT'S AN OBLIGATION IMPOSED ON THE
09:40:32 5 GOVERNMENT AND THERE ARE SEVERE REMEDIES THAT ARE AVAILABLE TO
09:40:38 6 THE COURT, SHOULD THAT BE VIOLATED.

09:40:41 7 SO I'M GOING TO LEAVE IT AT THAT. I WILL NOT CONDUCT AN
09:40:45 8 IN CAMERA REVIEW OF THE GOVERNMENT'S FILE. SO THAT'S ALL I'M
09:40:50 9 GOING TO SAY ON THAT SUBJECT RIGHT NOW.

09:40:52 10 AGAIN, JUST TO REITERATE, THE LAST THING WOULD BE I URGE
09:40:55 11 DEFENSE COUNSEL TO HAVE A DISCUSSION WITH GOVERNMENT COUNSEL
09:40:58 12 ABOUT WHAT THEY THINK THEY ARE MISSING SO THAT THE GOVERNMENT
09:41:02 13 DOESN'T INADVERTENTLY -- DOESN'T INADVERTENTLY FAIL TO DISCLOSE
09:41:09 14 INFORMATION THAT IT WOULD IF IT WAS AWARE OF IT, WOULD COMPLY
09:41:17 15 WITH -- FURTHER COMPLY WITH ITS BRADY OBLIGATIONS. I'M GOING
09:41:20 16 TO LEAVE IT AT THAT.

09:41:21 17 NOW I'M GOING TO TALK ABOUT THE PARTIES' PROPOSED PRETRIAL
09:41:25 18 ORDER. BOTH DEFENDANTS ADOPT THE GOVERNMENT'S WITNESS LIST AND
09:41:32 19 RESERVE THE RIGHT TO SUPPLEMENT OR MODIFY THE LIST. AS A
09:41:37 20 REMINDER, PER THE COURT'S STANDING ORDERS, DEFENSE WITNESSES
09:41:41 21 WHO ARE NOT TRUE REBUTTAL WITNESSES ARE CONSIDERED PART OF THE
09:41:44 22 DEFENDANT'S CASE IN CHIEF AND MUST BE DISCLOSED. REBUTTAL
09:41:48 23 EXPERTS MUST ALSO BE DISCLOSED IN ACCORDANCE WITH THE COURT'S
09:41:54 24 STANDING RULES AND THE FEDERAL RULES OF CRIMINAL PROCEDURE.

09:41:58 25 IF THE DEFENDANTS SEEK TO ADD ADDITIONAL WITNESSES WHO

09:42:02 1 HAVE NOT BEEN DISCLOSED, THE COURT WILL REQUIRE THE DEFENDANTS
09:42:07 2 TO SHOW GOOD CAUSE FOR ALLOWING THE SUPPLEMENTATION OF THEIR
09:42:13 3 WITNESS LIST. WE ARE NOT GOING TO BE INVOLVED IN A TRIAL BY
09:42:16 4 AMBUSH HERE.

09:42:19 5 THE NEXT THING I WANT TO TALK ABOUT IS THE TRIAL AND THE
09:42:23 6 SCHEDULE, AND FIRSTLY, THE LENGTH OF TRIAL. ALTHOUGH THE COURT
09:42:27 7 DOES NOT IMPOSE TIME LIMITS IN CRIMINAL TRIALS, THE COURT IS
09:42:32 8 RESERVING TIME COMMENSURATE WITH THE PARTIES' ESTIMATES, THE
09:42:36 9 PARTIES SHOULD LET THE COURT KNOW AS SOON AS POSSIBLE IF THEY
09:42:40 10 WOULD NEED ADDITIONAL TIME.

09:42:42 11 LET ME ASK GOVERNMENT COUNSEL FIRST, SINCE THE RESPONSE TO
09:42:49 12 THE COURT'S ORDER WITH RESPECT TO SCHEDULING, HAS THERE BEEN
09:42:53 13 ANY CHANGE IN THE GOVERNMENT'S ESTIMATE?

09:42:55 14 MR. KRISHNAMURTHY: NO.

09:42:56 15 THE COURT: FROM THE DEFENSE PERSPECTIVE, HAS THERE
09:42:58 16 BEEN ANY CHANGE IN YOUR ESTIMATES OF THE LENGTH OF THE CASE AS
09:43:03 17 IT RELATES TO THE WHOLE CASE AS WELL AS ANY CASE THE DEFENDANTS
09:43:07 18 CHOOSE TO PUT ON?

09:43:08 19 MS. CRANDELL: ON BEHALF OF MR. AMIRI, NO.

09:43:10 20 THE COURT: AND ON BEHALF OF MR. WENGER?

09:43:13 21 MS. LOPES: NO.

09:43:13 22 THE COURT: ALL RIGHT. THANK YOU VERY MUCH.

09:43:16 23 LET'S TALK ABOUT SCHEDULE NOW BECAUSE WE ARE GOING TO DO
09:43:19 24 SOMETHING A LITTLE BIT DIFFERENT FROM THE WAY THE COURT
09:43:21 25 NORMALLY HANDLES THIS CASE BECAUSE THE COURT HAS OTHER MATTERS

09:43:26 1 AND AVAILABILITY ISSUES LATE IN MARCH AND I WANT TO MAKE SURE
09:43:30 2 THAT COMMENSURATE WITH DUE PROCESS, THIS CASE GETS DONE IN TIME
09:43:34 3 FOR ALL OF THAT.

09:43:35 4 SO FOR THIS CASE, WE WILL SIT MONDAY, WEDNESDAY, THURSDAY
09:43:39 5 AND FRIDAY FROM 8:00 A.M. TO 4:30 P.M. AND ON TUESDAYS FROM
09:43:47 6 8:00 A.M. TO 12:15 IN ORDER TO ACCOMMODATE THE COURT'S
09:43:51 7 CRIMINAL -- REGULAR CRIMINAL CALENDAR.

09:43:55 8 ON MONDAY, MARCH 24TH, WE WILL ADJOURN AT 1:00 P.M. TO
09:43:59 9 GIVE THE GOVERNMENT AND MR. WENGER A BREAK BEFORE THE PRETRIAL
09:44:05 10 CONFERENCE IN THE -268 CASE SO THAT YOU HAVE A LITTLE BIT OF
09:44:10 11 BREATHING ROOM THERE AND THE COURT DOES AS WELL.

09:44:14 12 COUNSEL SHALL ARRIVE BY 7:30 A.M. EVERY TRIAL DAY, AT THE
09:44:19 13 LATEST, TO ADDRESS MATTERS, IF ANY, OUTSIDE OF THE PRESENCE OF
09:44:23 14 THE JURY.

09:44:24 15 WE RESERVE THAT TIME BEFORE THE JURY COMES IN AND ALSO
09:44:29 16 AFTER THE CLOSE OF BUSINESS TO DEAL WITH THOSE KINDS OF
09:44:34 17 MATTERS. I WILL SAY THAT ON THE DAYS WE ARE SITTING AT 4:30,
09:44:38 18 THERE'S PROBABLY NOT GOING TO BE AN AWFUL LOT OF TIME IN
09:44:42 19 DEFERENCE TO COURT'S STAFF AND THE COURT REPORTER, TO DO ANY
09:44:44 20 BUSINESS, SO MOST OF IT WILL BE DONE BEFORE THE JURY COMES IN.

09:44:53 21 NOW I'M GOING TO TALK ABOUT OPENING STATEMENTS. I WOULD
09:44:55 22 LIKE TO ASK THE GOVERNMENT OR THE PARTIES, STARTING WITH THE
09:44:58 23 GOVERNMENT, HOW MUCH TIME THE PARTIES REQUEST FOR OPENING
09:45:01 24 STATEMENT?

09:45:03 25 MR. KRISHNAMURTHY: WE ANTICIPATE THE GOVERNMENT'S

09:45:05 1 OPENING STATEMENT WILL BE 30 TO 45 MINUTES.

09:45:08 2 THE COURT: VERY WELL.

09:45:08 3 AND FROM THE DEFENDANT'S PERSPECTIVE?

09:45:12 4 MR. GOYETTE: ON BEHALF OF MR. AMIRI, I'M ALSO

09:45:15 5 EXPECTING APPROXIMATELY 30 MINUTES.

09:45:16 6 THE COURT: AND ON BEHALF OF MR. WENGER?

09:45:18 7 MS. LOPEZ: APPROXIMATELY 25 TO 30 MINUTES.

09:45:21 8 THE COURT: OKAY. THANK YOU, YOUR HONOR.

09:45:25 9 THE PARTIES' OPENING STATEMENTS, THIS NEEDS NOT BE SAID

09:45:28 10 BUT I WILL SAY IT ANYWAY, I FIND OCCASIONALLY THAT COUNSEL

09:45:31 11 FORGETS THIS OR DOESN'T COMPLY, THE PARTIES' OPENING STATEMENT

09:45:36 12 SHALL BE CONFINED TO EXPECTED CONTENTS OF WITNESS'S TESTIMONY

09:45:38 13 AND EXHIBITS THAT THEY REASONABLY BELIEVE WILL BE ADMITTED.

09:45:42 14 THE PARTIES ARE NOT TO BE ARGUMENTATIVE OR TO SUGGEST

09:45:45 15 INFERENCES THAT THEY WOULD LIKE THE JURY TO MAKE FROM THE

09:45:49 16 EVIDENCE.

09:45:49 17 I THINK AS A MATTER OF TRIAL PRACTICE, SKILLS, IT'S A BAD

09:45:55 18 HABIT OR BAD IDEA TO DO THAT ANYWAY BUT I DON'T ALLOW IT

09:45:58 19 BECAUSE IT'S NOT APPROPRIATE FOR OPENING STATEMENT.

09:46:01 20 THE COURT WILL REQUIRE THE PARTIES TO EXCHANGE THEIR

09:46:05 21 OPENING STATEMENT, DEMONSTRATIVE AIDS, IF ANY, BY THE CLOSE OF

09:46:09 22 BUSINESS ON THE THURSDAY BEFORE TRIAL AND FILE ANY OBJECTIONS

09:46:13 23 WITH THE COURT BY 4:00 P.M. ON THE FRIDAY BEFORE THE TRIAL. BY

09:46:20 24 TRIAL, I MEAN THAT THE OPENING STATEMENTS AND THE TESTIMONY,

09:46:22 25 ET CETERA, NOT JURY SELECTION.

09:46:31 1 NOW I'M GOING TO TALK ABOUT MOTIONS IN LIMINE. UNLESS I

09:46:33 2 HAVE SPECIFIC QUESTIONS, I WILL NOT PERMIT FURTHER ARGUMENT ON

09:46:37 3 THE MOTION, THERE WILL BE NO FURTHER WRITTEN RULINGS ON THE

09:46:41 4 MOTIONS REGARDING MOTIONS IN LIMINE. MY RULINGS ON MOTIONS IN

09:46:43 5 LIMINE, THE EFFECT OF THOSE RULINGS, WILL BE THE LAW OF THIS

09:46:50 6 CASE. I KNOW THE LAW OF THE CASE DOCTRINE IS AN APPELLATE

09:46:53 7 DOCTRINE, BUT EFFECTIVELY IT'S ALSO THE LAW OF THE CASE FOR THE

09:47:00 8 TRIAL; THEREFORE WHAT FLOWS FROM THAT IS THAT IF ANY PARTY

09:47:04 9 BELIEVES THAT THE OPPOSING PARTY HAS VIOLATED THE COURT'S

09:47:07 10 RULING OR ACTED IN A MANNER THAT REQUIRES THE COURT TO REVISIT

09:47:10 11 THE IN LIMINE RULING, THAT PARTY SHOULD NOT ENGAGE IN SELF-HELP

09:47:15 12 AND SAY TO THEMSELVES OR TO OTHERS, HEY, WE THINK THE OTHER

09:47:19 13 SIDE OPENED THE DOOR AND I'M GOING TO THEREFORE WALK IN AND

09:47:23 14 PRODUCE EVIDENCE THAT WOULD HAVE OTHERWISE BEEN EXCLUDABLE.

09:47:27 15 IF YOU FEEL THAT THAT'S THE CASE, YOU SHOULD ASK --

09:47:30 16 COUNSEL SHOULD ASK THE COURT TO APPROACH FOR SIDEBAR, AND IF I

09:47:36 17 INQUIRE, SIMPLY STATE THAT HE OR SHE WISHES TO ADDRESS AN ISSUE

09:47:41 18 RAISED AT THE PRETRIAL CONFERENCE AND THEN I WILL HEAR ARGUMENT

09:47:44 19 OUTSIDE OF THE PRESENCE OF THE JURY AND DETERMINE WHETHER OR

09:47:48 20 NOT THE DOOR HAS BEEN OPENED TO RECONSIDERING ANY IN LIMINE

09:47:53 21 RULING.

09:47:54 22 NOW I'M GOING TO GO TO THE SPECIFIC IN LIMINE MOTIONS AND

09:48:01 23 THE COURT'S RULING WITH RESPECT TO THOSE.

09:48:03 24 SO THE FIRST ONE IS THE MOTION TO ADMIT EVIDENCE, AND

09:48:09 25 THESE ARE THE GOVERNMENT'S MOTION'S FIRST WHICH TRADITIONALLY

09:48:13 1 THE COURT RULES ON FIRST.

09:48:14 2 THE GOVERNMENT'S MOTION TO ADMIT EVIDENCE WHICH IS

09:48:17 3 INEXTRICABLY INTERTWINED AND/OR PURSUANT TO FEDERAL RULE OF

09:48:21 4 EVIDENCE SECTION 404(B).

09:48:23 5 IN RESOLVING THIS MOTION, THE COURT DID NOT CONSIDER AND

09:48:28 6 WILL NOT CONSIDER THE UNAUTHORIZED SUPPLEMENTAL BRIEF FILED BY

09:48:33 7 COUNSEL FOR MR. WENGER AT DOCKET NUMBER 294.

09:48:38 8 PARAGRAPH 6(G) OF THE COURT'S STANDING ORDERS FOR CRIMINAL

09:48:41 9 CASES REQUIRES OPPOSITIONS TO MOTIONS IN LIMINE TO BE SERVED ON

09:48:46 10 OPPOSING COUNSEL 20 DAYS BEFORE THE PRETRIAL CONFERENCE AND

09:48:49 11 FILED WITH THE COURT 14 DAYS BEFORE THE PRETRIAL CONFERENCE.

09:48:55 12 MS. CASTRONOVO FILED THE SUPPLEMENTAL BRIEF ONLY FOUR DAYS

09:49:01 13 BEFORE THE PRETRIAL CONFERENCE, SO THE COURT WILL NOT AND DOES

09:49:04 14 NOT CONSIDER IT.

09:49:06 15 THE SAME PARAGRAPH OF THE COURT'S STANDING ORDERS PLACES

09:49:09 16 STRICT LIMITS ON THE NUMBER AND LENGTH OF BRIEFS AND REQUIRES

09:49:13 17 LEAVE TO DEVIATE FROM THOSE LIMITS. THE COURT DOES NOT PERMIT

09:49:18 18 REPLY BRIEFING. BY FILING A SUPPLEMENTAL BRIEF OUT OF TIME AND

09:49:24 19 OUT OF LEAVE OF COURT, MS. CASTRONOVO VIOLATED THESE LIMITS,

09:49:28 20 AND THE COURT DOES NOT TAKE THAT VIOLATION LIGHTLY.

09:49:31 21 THIS IS NOT THE FIRST TIME THAT COUNSEL, MS. CASTRONOVO,

09:49:34 22 HAS FILED BRIEFS ON MOTIONS NOT PERMITTED BY THE COURT'S ORDERS

09:49:38 23 OR PROCEDURES. THIS IS NOT THE FIRST TIME THAT THE COURT HAS

09:49:41 24 DECLINED TO CONSIDER OR EVEN STRUCK A FILING BY MS. CASTRONOVO.

09:49:47 25 IT IS INAPPROPRIATE TO CLUTTER THE DOCKET WITH EXTRANEous

09:49:51 1 FILINGS INSTEAD OF MAKING ARGUMENTS IN THE FORM AND PROCESS
09:49:56 2 CONTEMPLATED AND REQUIRED BY THE COURT'S ORDERS AND RULES OF
09:49:59 3 PROCEDURE. IT IS UNFAIR TO THE OTHER PARTIES, IT BOGS DOWN THE
09:50:03 4 COURT AND CAUSES DELAYS WHICH THE COURT DOES NOT APPRECIATE.
09:50:09 5 THE COURT HEREBY ADMONISHES MS. CASTRONOVO AND MR. WENGER
09:50:14 6 AND WARNS THAT FURTHER SUCH FILINGS, MEANING FILINGS NOT
09:50:17 7 ALLOWED BY THE FEDERAL RULES, BY THIS COURT'S STANDING ORDERS
09:50:20 8 OR OTHERWISE NOT AUTHORIZED BY A LEAVE OF COURT, WILL RESULT IN
09:50:23 9 AN ORDER TO SHOW CAUSE WHY SANCTIONS SHOULD NOT BE IMPOSED,
09:50:27 10 INCLUDING MONETARY SANCTIONS, ON EITHER OR BOTH MS. CASTRONOVO
09:50:31 11 AND/OR MR. WENGER.
09:50:36 12 TO THE GOVERNMENT, I HAVE A QUESTION, HOW MUCH TIME DOES
09:50:39 13 THE GOVERNMENT ESTIMATE IT WILL TAKE TO INTRODUCE EVIDENCE
09:50:42 14 ABOUT THE INCIDENCE REFERENCED IN THE GOVERNMENT'S MOTIONS IN
09:50:50 15 LIMINE TO ADMIT THIS EVIDENCE THAT I'VE DESCRIBED?
09:50:53 16 MR. KRISHNAMURTHY: SO THE FORM OF THE EVIDENCE FOR
09:50:54 17 EACH OF THE INCIDENTS IS GOING TO BE SLIGHTLY DIFFERENT. I
09:50:59 18 DON'T HAVE AN ESTIMATE OF ALL OF THIS TOGETHER BUT I WILL SAY
09:51:03 19 THAT WE ARE STILL INCLUDING THIS EVIDENCE COMFORTABLY WITHIN
09:51:08 20 THE INITIAL ESTIMATE THAT WE PROVIDED THE COURT.
09:51:11 21 THE COURT: WELL THE REASON I ASK THE QUESTION,
09:51:13 22 COUNSEL, IS THAT AS YOU KNOW, ONE OF THE -- THE COURT ALWAYS
09:51:19 23 HAS DISCRETION UNDER RULE 403 TO EXCLUDE EVIDENCE BASED UPON
09:51:27 24 WASTING COURT RESOURCES OR IMPOSING TOO MUCH TIME FOR IT.
09:51:32 25 AND SO ONE OF THE BALANCING TESTS THAT THE COURT CONSIDERS

09:51:36	1	IS ESSENTIALLY TAKING AS A CORE, OR SEPARATELY THIS EXTRA, I
09:51:41	2	WILL CALL IT EXTRA EVIDENCE FOR EASE OF CHARACTERIZATION,
09:51:45	3	VERSUS THE CORE EVIDENCE AND DETERMINING.
09:51:48	4	SO FOR EXAMPLE, IF IT WAS 50/50 OR EVEN 70/30, 30 PERCENT
09:51:55	5	BEING THE EXTRA, THE COURT MIGHT USE THAT AS A ONE FACTOR TO
09:51:59	6	DETERMINE IN WHETHER TO EXERCISE ITS DISCRETION UNDER 403. SO
09:52:05	7	WITH THAT IN MIND, ARE YOU TELLING ME YOU STILL DON'T HAVE SUCH
09:52:08	8	AN ESTIMATE?
09:52:09	9	MR. KRISHNAMURTHY: PERHAPS I COULD GO THROUGH EACH
09:52:11	10	ONE AND DESCRIBE FOR THE COURT WHAT EVIDENCE AND HOW LONG IT
09:52:13	11	WILL TAKE.
09:52:14	12	THE COURT: ALL RIGHT. BRIEFLY, PLEASE DO THAT.
09:52:16	13	MR. KRISHNAMURTHY: SURE.
09:52:18	14	SO FOR THE JULY 7, 2019 ARREST, WE ANTICIPATE PLAYING A
09:52:22	15	BRIEF VIDEO OF ABOUT FIVE MINUTES AND HAVING TESTIMONY FROM A
09:52:26	16	WITNESS WHO WILL ALREADY BE TESTIFYING ABOUT TEN MINUTES ABOUT
09:52:30	17	THIS.
09:52:31	18	THE COURT: SO 15 MINUTES TOTAL?
09:52:33	19	MR. KRISHNAMURTHY: CORRECT.
09:52:33	20	THE COURT: ALL RIGHT.
09:52:37	21	MR. KRISHNAMURTHY: FOR THE OCTOBER 2019 ARREST, WE
09:52:40	22	ANTICIPATE HAVING BRIEF TESTIMONY OF ABOUT FIVE MINUTES FROM A
09:52:43	23	WITNESS WHO WILL ALREADY BE TESTIFYING.
09:52:48	24	FOR THE JANUARY 3RD, 2020 ARREST, WE ANTICIPATE ABOUT TEN
09:52:52	25	MINUTES OF TESTIMONY FROM A WITNESS WHO WILL ALREADY BE

09:52:57 1 TESTIFYING, AS WELL AS PERHAPS TEN MINUTES OF TEXT MESSAGES.

09:53:10 2 FOR THE AUGUST 22ND, 2020 ARREST, WE ANTICIPATE ABOUT A

09:53:15 3 TEN-MINUTE VIDEO AS WELL AS ABOUT FIVE MINUTES OF TEXT

09:53:21 4 MESSAGES.

09:53:25 5 AND FOR THE JANUARY 26TH, 2022 ARREST, WE ANTICIPATE ABOUT

09:53:36 6 TEN MINUTES OF TESTIMONY FROM A WITNESS WHO WILL ALREADY BE

09:53:41 7 TESTIFYING, AS WELL AS ABOUT FIVE MINUTES OF TEXT MESSAGES.

09:53:57 8 THE COURT: SO THE COURT'S ANALYSIS, WHICH I WILL

09:54:03 9 TAKE UNDER ADVISEMENT AT THIS POINT, I'M GOING TO DOUBLE THAT

09:54:05 10 TIME, AGAIN WITHOUT LIMITING THE DEFENSE IN ITS

09:54:11 11 CROSS-EXAMINATION, BUT JUST FOR PURPOSES OF CALCULATION, TO

09:54:15 12 DOUBLE THAT TIME THAT THE GOVERNMENT JUST ESTIMATED TO INCLUDE

09:54:20 13 ANY POTENTIAL CROSS-EXAMINATION, WITH THE NOTION THAT THE

09:54:27 14 DEFENSE IS OBVIOUSLY LIMITED.

09:54:31 15 SO THE QUICK ESTIMATE, AGAIN I WAS RUNNING DOWN AND

09:54:33 16 CALCULATING, IT WAS ABOUT AN HOUR AND TEN MINUTES, SO THAT WILL

09:54:38 17 BE TWO HOURS AND TWENTY MINUTES TOTAL WITH CROSS-EXAMINATION.

09:54:40 18 SO I WILL TAKE THAT UNDER ADVISEMENT AND THAT WILL BE

09:54:46 19 SUBJECT TO -- THAT WILL MAKE THE RULINGS THAT I'M ABOUT TO MAKE

09:54:51 20 SUBJECT TO MY CONSIDERATION OF A 403 SITUATION, ESPECIALLY IF

09:54:54 21 AS THE TRIAL EVOLVES IT BECOMES -- WE GET INVOLVED IN MINI

09:54:58 22 TRIALS ON THESE OTHER ISSUES, THEN I WILL RECONSIDER.

09:55:04 23 SO HERE'S THE SPECIFIC RULING: SO THE MOTION, I WILL SAY

09:55:09 24 AS A GENERAL MATTER, IS GRANTED. THE GOVERNMENT'S MOTION TO

09:55:13 25 ADMIT EVIDENCE IS GRANTED IN PART, AS FOLLOWS:

09:55:15 1 THE COURT FINDS THAT THE INCIDENTS IN OCTOBER 2019 AND
09:55:21 2 JANUARY 3RD, 2020, ON AUGUST 22ND, 2020 AND ON JANUARY 26, 2022
09:55:30 3 ARE INTRINSIC TO THE CONSPIRACY CHARGE. ALL APPEAR TO INVOLVE
09:55:35 4 THE USE OF EXCESSIVE FORCE AND COMMUNICATION BRAGGING ABOUT THE
09:55:39 5 SAME BETWEEN ONE OR BOTH OF THE DEFENDANTS AND OTHER OFFICERS.
09:55:43 6 SO THOSE ARE ADMITTED.

09:55:45 7 THE GOVERNMENT HAS NOT DEMONSTRATED, HOWEVER, THAT THE
09:55:49 8 JULY 7, 2019 ARREST BY MR. WENGER IS INTRINSIC TO THE ALLEGED
09:55:55 9 CONSPIRACY, AND THE COURT WILL THEREFORE NOT ADMIT THAT UNDER
09:55:59 10 THE INEXTRICABLY INTERTWINED CONCEPT BUT WILL CONSIDER -- WILL
09:56:04 11 EVALUATE THE EVIDENCE UNDER RULE 404(B).

09:56:09 12 NOW THE NINTH CIRCUIT IMPOSES A FOUR-PART TEST TO
09:56:14 13 DETERMINE WHETHER OTHER EVIDENCE MAY BE ADMITTED. "SUCH
09:56:17 14 EVIDENCE MAY BE ADMITTED IF:

09:56:19 15 ONE, THE EVIDENCE TENDS TO PROVE A MATERIAL POINT.
09:56:23 16 TWO, THE OTHER ACT IS NOT TOO REMOTE IN TIME.
09:56:26 17 THREE, THE EVIDENCE IS SUFFICIENT TO SUPPORT A FINDING
09:56:31 18 THAT DEFENDANT COMMITTED THE OTHER ACT.

09:56:33 19 AND FOUR, IN CERTAIN CASES, THE ACT IS SIMILAR TO THE
09:56:36 20 OFFENSE CHARGED."

09:56:38 21 AND I'M QUOTING THERE, UNITED STATES V. BAILEY, 696 F.3D,
09:56:44 22 794 AT 799, 2012.

09:56:49 23 TO PROVE MATERIALITY, THE GOVERNMENT "MUST ARTICULATE
09:56:53 24 PRECISELY THE EVIDENTIAL HYPOTHESIS BY WHICH A FACT OF
09:56:59 25 CONSEQUENCE MAY BE INFERRED FROM THE OTHER ACT'S EVIDENCE."

09:57:04 1 MEANING, "THE GOVERNMENT MUST PROVE A LOGICAL CONNECTION
09:57:08 2 BETWEEN THE KNOWLEDGE GAINED AS A RESULT OF THE COMMISSION OF
09:57:11 3 THE PRIOR ACT AND THE KNOWLEDGE AT ISSUE IN THE CHARGED ACT."
09:57:16 4 AND FOR THAT THE COURT IS CITING THE NINTH CIRCUIT CASE OF
09:57:19 5 UNITED STATES V. MAYANS, M-A-Y-A-N-S. 17 F.3D, 1174 AT 1181
09:57:28 6 THROUGH 82, DECIDED IN 1994.
09:57:31 7 THE COURT WILL PERMIT EVIDENCE REGARDING THE REMEDIAL
09:57:35 8 TRAINING MR. WENGER UNDERTOOK FOLLOWING THE ARREST AS EVIDENCE
09:57:39 9 OF MR. WENGER'S KNOWLEDGE OR INTENT IN THE CHARGED CONDUCT.
09:57:44 10 THE GOVERNMENT HAS DEMONSTRATED A DIRECT CONNECTION
09:57:46 11 BETWEEN THE REMEDIAL TRAINING AND MR. WENGER'S KNOWLEDGE OR
09:57:50 12 INTENT IN LATER ALLEGED MISCONDUCT, INCLUDING THE -- HIS
09:57:55 13 PARTICIPATION IN THE ALLEGED CONSPIRACY AND IN THE ALLEGED USE
09:57:58 14 OF FORCE IN COUNT 8.
09:58:01 15 THE INCIDENT IS NOT REMOTE IN TIME AND IS ENCOMPASSED BY
09:58:06 16 THE SCOPE OF THE CONSPIRACY. THE ACT IS SIMILAR TO THE OTHER
09:58:09 17 OFFENSES CHARGED. HOWEVER, UNLIKE WITH OTHER ALLEGATIONS
09:58:13 18 REPORTING TO CONSPIRACY, THE GOVERNMENT HAS NOT PROVIDED ANY
09:58:17 19 INFORMATION REGARDING MR. WENGER'S COMMUNICATIONS ABOUT THE USE
09:58:21 20 OF FORCE CLOSE IN TIME TO THE EVENT.
09:58:24 21 EVIDENCE REGARDING THE INCIDENT MAY ALSO LEAD THE JURY TO
09:58:28 22 MAKE AN IMPERMISSIBLE INFERENCE THAT BECAUSE MR. WENGER ACTED
09:58:32 23 VIOLENTLY, HE HAS VIOLENT CHARACTERISTICS AND THEREFORE ACTED
09:58:36 24 WITH EXCESSIVE FORCE DURING THE CRIME ALLEGED IN COUNT 8.
09:58:40 25 THE COURT WILL NOT PERMIT EVIDENCE OF THE DETAILS OF THE

09:58:43 1 ARREST, OR ALLEGEDLY THE DETAILS OF THE ARREST, OR ALLEGEDLY
09:58:48 2 FALSIFYING THE POLICE REPORT UNLESS AND UNTIL THE GOVERNMENT
09:58:52 3 PROVIDES EVIDENCE TO THE COURT'S SATISFACTION CONNECTING THE
09:58:56 4 CONDUCT TO THE CONSPIRACY TO VIOLATE RIGHTS, THAT WILL OCCUR IN
09:59:00 5 THE COURSE OF THE TRIAL IN A DETAILED OFFER OF PROOF WHEN THE
09:59:04 6 COURT IS READY TO INDUCE THAT EVIDENCE AND THE COURT WILL THEN
09:59:08 7 CONSIDER IT AT THE MOMENT -- AT THAT MOMENT.

09:59:11 8 BUT SHOULD THE COURT REVISIT THIS DECISION, THE COURT WILL
09:59:17 9 REQUIRE A LIMITING INSTRUCTION TO PREVENT USE OF THE INCIDENT
09:59:20 10 AS EVIDENCE OF WENGER'S GUILT IN COUNT 8. AND THE COURT WILL
09:59:23 11 REQUIRE THE GOVERNMENT IN THAT INSTANCE TO, IN THE FIRST
09:59:26 12 INSTANCE, TO DRAFT SUCH AN INSTRUCTION, A LIMITING INSTRUCTION,
09:59:33 13 AND TO RUN IT BY DEFENSE COUNSEL IN AN EFFORT TO COME TO AN
09:59:41 14 AGREEMENT ON THAT.

09:59:42 15 AGAIN, THE COURT WILL ALLOW EVIDENCE OF THE REMEDIAL
09:59:45 16 TRAINING TO COME IN FOR BOTH COUNT 1 AND COUNT 8.

09:59:48 17 NEXT MOTION. MOTION TO ADMIT EVIDENCE AS TO DEFENDANT
09:59:52 18 MORTEZA AMIRI PURSUANT TO FEDERAL RULE OF EVIDENCE 404(B).

09:59:59 19 THAT MOTION TO ADMIT EVIDENCE WITH RESPECT TO DEFENDANT
10:00:02 20 AMIRI IS GRANTED -- IS DENIED, EXCUSE ME, IS DENIED.

10:00:08 21 THE GOVERNMENT CONTENDS THAT MR. AMIRI GAINED KNOWLEDGE OF
10:00:11 22 HIS PRIOR ALLEGED FALSITIES, THAT "HE WOULD BE ABLE TO EVADE
10:00:15 23 SCRUTINY AND MANIPULATE EXTERNAL REVIEW SYSTEMS BY FALSIFYING
10:00:19 24 POLICE REPORTS." THAT'S MOTION IN LIMINE NUMBER 1, AT PAGE 4,
10:00:25 25 LINES 10 THROUGH 11.

10:00:27 1 IN OTHER WORDS, BECAUSE MR. AMIRI BELIEVED HE GOT AWAY
10:00:31 2 WITH THE ALLEGED FALSITIES IN 2019, WHICH ARE THE SUBJECT OF
10:00:36 3 COUNT 9, HE HAD KNOWLEDGE THAT HE COULD GET AWAY WITH OTHER
10:00:40 4 FALSITIES IN 2020. THE GOVERNMENT ALSO CONTENDS THAT THE
10:00:43 5 EVIDENCE DEMONSTRATE THE INTENTIONALITY OF THE ALLEGED
10:00:46 6 FALSITIES IN THE 2019 REPORT.

10:00:51 7 THE INTENT REQUIREMENT FOR COUNT 9 IS THAT THE DEFENDANT
10:00:56 8 "KNOWINGLY, ALTERED, DESTROYED, CONCEALED OR FALSIFIED A
10:01:01 9 RECORD, DOCUMENT OR TANGIBLE OBJECT," AND "ACTED WITH THE
10:01:05 10 INTENT TO IMPEDE, OBSTRUCT OR INFLUENCE AN ACTUAL OR
10:01:09 11 CONTEMPLATED INVESTIGATION OF A MATTER WITHIN THE JURISDICTION
10:01:12 12 OF ANY DEPARTMENT OR AGENCY OF THE UNITED STATES." AND THAT'S
10:01:16 13 STIPULATED JURY INSTRUCTION NUMBER 57. "THE DEFENDANT'S
10:01:22 14 INTENTION TO OBSTRUCT JUSTICE MUST BE SUBSTANTIAL." AND THAT'S
10:01:26 15 THE PREVIOUS CITATION.

10:01:29 16 ELEMENTS TWO AND THREE OF THE 404(B) TEST ARE SATISFIED
10:01:35 17 BECAUSE MR. AMIRI'S OTHER ACTS ARE NOT REMOTE IN TIME AND THERE
10:01:42 18 IS SUFFICIENT EVIDENCE BY MR. AMIRI'S OWN ADMISSIONS TO SHOW
10:01:44 19 THAT MR. AMIRI COMMITTED THE OTHER ACTS. HOWEVER, THE
10:01:48 20 GOVERNMENT FALTERS ON ELEMENTS ONE AND FOUR THAT THE EVIDENCE
10:01:52 21 TENDS TO PROVE A MATERIAL POINT AND THE ACTS WERE SUFFICIENTLY
10:01:57 22 SIMILAR.

10:01:59 23 THE SIMILARITY ARGUMENT BOILS DOWN TO THIS, AMIRI LIED
10:02:04 24 KNOWINGLY TWICE SO HE MUST HAVE LIED KNOWINGLY A THIRD TIME,
10:02:08 25 WHICH UNDER THE LATIN DOCTRINE, FALSUS IN UNO, FALSUS IN

10:02:14 1 OMNIBUS, ONCE A LIAR, ALWAYS A LIAR. THE GOVERNMENT OFFERS

10:02:17 2 NOTHING MORE TO CONNECT THE ACTS OTHER THAN THAT MAXIM,

10:02:21 3 ALTHOUGH THEY DIDN'T USE THE LATIN PHRASE, MOST PEOPLE DON'T.

10:02:26 4 SPECIFICALLY, THE COURT FINDS THAT THE OTHER ACT EVIDENCE

10:02:29 5 RELATING TO MR. AMIRI, ALLEGEDLY SEIZING MARIJUANA FOR PERSONAL

10:02:33 6 CONSUMPTION, IS IMPROPER CHARACTER EVIDENCE AND WOULD SERVE

10:02:38 7 ONLY TO SUGGEST THAT MR. AMIRI HAS CRIMINAL PROPENSITIES AND

10:02:43 8 NOT ANY "MATERIAL POINT."

10:02:49 9 FALSIFYING A POLICE REPORT TO CONCEAL THEFT OF MARIJUANA

10:02:51 10 IS MATERIALLY DIFFERENT THAN FALSIFYING A POLICE REPORT TO

10:02:55 11 CONCEAL THE PRESENCE OF ANOTHER POLICE OFFICER DURING A USE OF

10:02:59 12 FORCE INCIDENT.

10:03:00 13 MR. AMIRI IS NOT CHARGED WITH DRUG USE OR UNLAWFUL SEIZURE

10:03:04 14 AND INTRODUCTION OF EVIDENCE RELATING TO HIS CONSUMPTION OF

10:03:08 15 MARIJUANA MAY CONFUSE OR INFLAME THE JURY.

10:03:13 16 MR. AMIRI'S STATEMENT THAT HE "SOMETIMES JUST SAYS PEOPLE

10:03:17 17 GAVE MR. AMIRI A FULL CONFESSION WHEN THEY DIDN'T" SO THAT

10:03:22 18 CASES "GET FILED FASTER," LIKEWISE SERVES TO SHOW THAT FROM THE

10:03:28 19 GOVERNMENT'S PERSPECTIVE, THAT MR. AMIRI IS A LIAR WHO LIES IN

10:03:34 20 POLICE REPORTS. IT DOES NOT DEMONSTRATE THAT MR. AMIRI GAINED

10:03:37 21 ANY KNOWLEDGE FROM FALSIFYING REPORTS WHICH HELPED HIM TO

10:03:40 22 FALSIFY THE REPORT IN COUNT 9. TO THE EXTENT THE STATEMENTS

10:03:44 23 REFLECT MR. AMIRI'S INTENT TO OBSTRUCT JUSTICE, AS ALLEGED IN

10:03:48 24 COUNT 9, IT IS OF MARGINAL PROBATIVE VALUE.

10:03:53 25 ADDITIONALLY THE COURT IS CONCERNED OF THE POSSIBILITY OF

10:03:56 1 EVIDENCE OF MULTIPLE CONSPIRACIES BEYOND THE ONE CHARGED IN THE
10:04:00 2 INDICTMENT.

10:04:01 3 NOT ALL BAD ACTS ALLEGEDLY PERFORMED BY THE DEFENDANTS
10:04:05 4 WILL COME IN AT TRIAL TO PROVE COUNT 1 OR TO PROVE INTENT FOR
10:04:09 5 THE REMAINING COUNTS, ONLY ACTS THAT ARE OF THE SAME ILK AS THE
10:04:14 6 ONES CHARGED.

10:04:20 7 NEXT. MOTION TO EXCLUDE TESTIMONY OF BETH CHRISMAN,
10:04:24 8 C-H-R-I-S-M-A-N, JASON HAWKS, H-A-W-K-S, AND ROBERT MCFARLANE,
10:04:33 9 M-C-F-A-R-L-A-N-E, IS GRANTED IN PART. MS. CHRISMAN'S PROPOSED
10:04:36 10 TESTIMONY REGARDING HANDWRITING IS IRRELEVANT, AND KNOWING THE
10:04:41 11 QUESTION IS IRRELEVANT TO THE CASE AND MENTIONING OF THE
10:04:46 12 STEROID DISTRIBUTION CASE COULD RESULT IN PREJUDICE TO THE
10:04:47 13 DEFENDANTS. MR. WENGER'S PURPORTED USE OF THE TESTIMONY TO
10:04:52 14 CHALLENGE THE CREDIBILITY OF THE INVESTIGATION CONFLICTS WITH
10:04:55 15 THE COURT'S REPEATED RULINGS THAT IS INSPECTOR WALLACE'S
10:04:59 16 INVESTIGATION AND STATE WARRANT DID NOT TAINT THE FEDERAL CASE.

10:05:04 17 MR. HAWK'S PROPOSED TESTIMONY ABOUT MR. WENGER'S PHONE AND
10:05:10 18 DEFECTS IN THE STATE WARRANT IS ALSO IRRELEVANT. THE COURT HAS
10:05:13 19 RULED REPEATEDLY THAT INSPECTOR WALLACE'S ALLEGED FAILURES TO
10:05:17 20 COMPLY WITH THE CAL ECPA IN SEEKING THE STATE WARRANT HAVE NO
10:05:24 21 BEARING ON THE SUBSEQUENT FEDERAL WARRANTS, AND THAT IN ANY
10:05:27 22 EVENT, THE POINT IS MOOT BECAUSE THE GOVERNMENT AGREED NOT TO
10:05:31 23 INTRODUCE EVIDENCE DERIVED FROM THE SEARCHES OF MR. WENGER'S
10:05:35 24 CELL PHONE.

10:05:36 25 MR. WENGER MAY NOT REARGUE THESE MOTIONS TO THE JURY UNDER

10:05:41 1 THE GUISE OF CHALLENGING THE LEGITIMACY OF THE INVESTIGATION AS
10:05:45 2 A WHOLE.

10:05:46 3 MR. MCFARLAND'S TESTIMONY MAY BE RELEVANT, ALTHOUGH IT IS
10:05:50 4 UNCLEAR TO THE COURT AS TO WHAT CHARGE OR DEFENSE.

10:05:54 5 THE COURT ORDERS DEFENSE COUNSEL TO PRODUCE THE
10:05:59 6 "SYNCHRONIZED AUDIO AND VIDEO MATRIX" TO THE GOVERNMENT BY
10:06:03 7 WEDNESDAY, FEBRUARY 12TH BY 5 P.M. FAILURE TO DO SO MAY RESULT
10:06:08 8 IN EXCLUSION. THE GOVERNMENT MAY RENEW ITS MOTION IN LIMINE BY
10:06:12 9 FRIDAY, FEBRUARY 14TH 2025 BY 4 P.M.

10:06:18 10 I DO NOT NEED A FURTHER RESPONSE FROM THE DEFENDANTS TO
10:06:24 11 THE GOVERNMENT'S RENEWED MOTION. IF I NEED IT, I WILL ORDER
10:06:26 12 IT, BUT RIGHT NOW I'M NOT ORDERING IT.

10:06:30 13 4. MOTION TO LIMIT AND EXCLUDE EXPERT TESTIMONY ON THE
10:06:32 14 USE OF FORCE. THAT MOTION IS GRANTED. THE ANTICIPATED
10:06:37 15 TESTIMONY OF MR. GLEN AND MR. PFANNENSTIEL,
10:06:47 16 P-F-A-N-N-E-N-S-T-I-E-L, INTRUDES UPON THE PROVINCE OF THE JURY
10:06:49 17 AND REACH ULTIMATE LEGAL CONCLUSIONS WHICH IS NOT PERMISSIBLE.

10:06:54 18 MR. GLEN AND MR. PFANNENSTIEL MAY NOT TESTIFY WHETHER THEY
10:07:00 19 BELIEVE THE DEFENDANT'S USE OF FORCE WAS "REASONABLE,"
10:07:05 20 "JUSTIFIED," "NOT CRIMINAL," OR "LAWFUL." THEY MAY FURTHER NOT
10:07:11 21 TESTIFY AS TO THE DEFENDANT'S MENTAL STATE OR AS TO ANY LEGAL
10:07:16 22 STANDARDS.

10:07:17 23 MR. GLEN AND MR. PFANNENSTIEL MAY TESTIFY REGARDING
10:07:21 24 GENERAL POLICE POLICIES AND PROFESSIONAL STANDARDS OF PRACTICE
10:07:25 25 BUT SHALL NOT APPLY THE STANDARDS TO THE SPECIFIC FACTS OF THIS

10:07:28 1 CASE. THAT ADMONITION INCLUDES HYPOTHETICALS. COUNSEL MAY NOT

10:07:34 2 TRY TO ELICIT TESTIMONY REGARDING APPLICATION OF GENERAL

10:07:38 3 STANDARDS TO HYPOTHETICALS THAT TRAP THE FACTS PRESENTED BY THE

10:07:41 4 PARTIES.

10:07:44 5 COUNSEL MAY, HOWEVER, ELICIT TESTIMONY REGARDING THE FACTS

10:07:48 6 IN THIS CASE AS TO WHETHER LESSER FORCE ALTERNATIVES WERE

10:07:51 7 AVAILABLE IN ANY INJURIES THAT THEY OBSERVED.

10:07:57 8 THEY MAY ALSO TESTIFY AS TO THE DEFENDANT'S TRAINING OR

10:08:00 9 THE ANTIQUE POLICE DEPARTMENT'S POLICIES.

10:08:05 10 NUMBER 5. MOTION TO PRECLUDE IRRELEVANT ATTEMPTS TO

10:08:08 11 ENCOURAGE JURY NULLIFICATION. GRANTED. THE PARTIES SHALL NOT

10:08:13 12 APPEAL TO THE JURY'S SYMPATHY OR REFERENCE POTENTIAL

10:08:16 13 PUNISHMENT.

10:08:17 14 MR. WENGER SOUGHT DISMISSAL ON THE BASIS OF SELECTIVE

10:08:21 15 PROSECUTION AND THE COURT DENIED THE MOTION. HE MAY NOT

10:08:24 16 REARGUE THAT THEORY TO THE JURY.

10:08:27 17 NOW I WANT TO TURN TO MR. AMIRI'S MOTIONS IN LIMINE.

10:08:32 18 FIRST, MOTION TO EXCLUDE STATEMENTS OF CO-CONSPIRATORS.

10:08:32 19 DENIED.

10:08:37 20 THE GOVERNMENT HAS PRODUCED ENOUGH EVIDENCE OF CONSPIRACY

10:08:42 21 VELNON, AND THAT AS AN EVIDENTIARY MATTER. COCONSPIRATOR

10:08:48 22 STATEMENTS ARE ADMISSIBLE UNDER FEDERAL RULE OF EVIDENCE

10:08:51 23 801 (D) (2) (E).

10:08:54 24 NUMBER 2. MOTION TO EXCLUDE UNFAIRLY PREJUDICIAL

10:08:58 25 LANGUAGE. GRANTED IN PART.

10:09:02 1 THE COURT AGREES THAT THE WORD "FAGGOT" IN EXHIBITS 902
10:09:07 2 AND 932 IS INFLAMMATORY. HOWEVER, INCLUSION OF THE WORD IS
10:09:13 3 MORE PROBATIVE THAN PREJUDICIAL AS IT RELATES TO THE
10:09:16 4 GOVERNMENT'S THEORY OF INTENT. THE GOVERNMENT MAKES REFERENCE
10:09:19 5 TO A NUMBER OF EXCHANGES IN WHICH MR. AMIRI OR OTHERS USED THE
10:09:24 6 "N WORD," AND SADLY WE ALL KNOW WHAT THAT MEANS, OR REFERRED TO
10:09:29 7 BLACK PEOPLE AS "GORILLAS". THE COURT WAS UNABLE TO LOCATE
10:09:34 8 THESE EXCHANGES IN THE EXHIBITS IDENTIFIED BY MR. AMIRI. THE
10:09:38 9 GOVERNMENT STATES THAT IT DOES NOT INTEND TO USE THOSE
10:09:41 10 STATEMENTS IN ITS CASE IN CHIEF, SO MR. AMIRI'S MOTION IS MOOT
10:09:45 11 ON THAT POINT.
10:09:46 12 AND AS AN ASIDE, THE GOVERNMENT WILL NOT ALLOW ANY
10:09:49 13 EVIDENCE ABOUT THE ALLEGED USE OF THAT WORD OR THOSE WORDS, AS
10:09:53 14 THEY ARE EXTREMELY PREJUDICIAL AND NOT -- AND THE PREJUDICE
10:09:58 15 OUTWEIGHS ANY PROBATIVE EFFECT.
10:10:01 16 3. THE MOTION TO EXCLUDE REFERENCE TO DEFENDANT'S
10:10:04 17 TERMINATION AND EMPLOYMENT STATUS. THAT MOTION IS GRANTED.
10:10:08 18 THE FACT THAT MR. AMIRI'S TERMINATION FROM THE ANTIOCH
10:10:13 19 POLICE DEPARTMENT WILL BE ADMISSIBLE ONLY FOR IMPEACHMENT.
10:10:15 20 WITH A REMINDER, IT IS THE COURT, NOT THE GOVERNMENT, WHO
10:10:20 21 DETERMINES WHETHER AMIRI HAS OPENED THE DOOR TO THAT EVIDENCE.
10:10:23 22 EVIDENCE OF DISCIPLINE OR TRAINING WHILE ON THE FORCE WILL NOT
10:10:27 23 BE EXCLUDED.
10:10:30 24 4. MOTION TO EXCLUDE EVIDENCE OF PRIOR CONVICTION.
10:10:34 25 IF MR. AMIRI DECIDES TO TESTIFY AT TRIAL, EVIDENCE OF HIS

10:10:38 1 CONVICTION OF WIRE FRAUD IS ADMISSIBLE UNDER RULE 609(A) (2) OF
10:10:43 2 THE FEDERAL RULES OF EVIDENCE BECAUSE IT INVOLVED THE DISHONEST
10:10:47 3 ACT OR FALSE STATEMENT.

10:10:50 4 THE COURT WILL PROVIDE A LIMITING INSTRUCTION TO ENSURE
10:10:52 5 EVIDENCE OF THE CONVICTION MAY BE CONSIDERED ONLY FOR
10:10:56 6 IMPEACHMENT PURPOSES.

10:10:59 7 SO THAT IS -- THOSE ARE THE COURT'S RULINGS WITH RESPECT
10:11:04 8 TO IN LIMINE MOTIONS. THE COURT WILL NOT ISSUE ANY FURTHER
10:11:08 9 WRITTEN RULING. I COMMEND YOU TO THE MINUTES OF THE COURTROOM
10:11:18 10 DEPUTY, BUT THERE WILL NOT BE ANY FURTHER WRITTEN RULING.

10:11:21 11 THERE WILL NOT BE ANY WRITTEN RULING ON THOSE POINTS BECAUSE
10:11:25 12 THEY ARE WELL BRIEFED AND DOCUMENTED BY THE PARTIES.

10:11:28 13 NOW I WANT TO TALK ABOUT JURY ISSUES. AND FIRST, THE JURY
10:11:32 14 CERTIFICATION FORM. I WOULD LIKE TO -- HAVE WE GIVEN COUNSEL
10:11:37 15 YET THE CERTIFICATION FORMS? YES, YOU HAVE THEM.

10:11:41 16 NOW AGAIN, THIS FORM, JUST TO MENTION TO YOU, IS KIND
10:11:44 17 OF -- IT DOESN'T HAVE ANY LEGAL EFFECT, BUT IT INFORMS THE
10:11:53 18 JURY, EMPHASIZES TO THE JURY THE IMPORTANCE OF ITS CONDUCT
10:11:56 19 DURING THE TRIAL.

10:11:58 20 DOES THE GOVERNMENT HAVE ANY OBJECTION TO THE
10:12:00 21 CERTIFICATION?

10:12:05 22 MR. KRISHNAMURTHY: NO OBJECTION.

10:12:06 23 THE COURT: MR. GOYETTE?

10:12:09 24 MR. GOYETTE: NO OBJECTION, YOUR HONOR.

10:12:10 25 MS. CRANDELL: NO OBJECTION.

10:12:11 1 THE COURT: THANK YOU VERY MUCH.

10:12:13 2 NOW REGARDING JURY SELECTION, FIRST OF ALL, I WILL CONDUCT

10:12:19 3 QUESTIONING AT THE VOIR DIRE, BUT I WILL CONDUCT -- I WILL

10:12:24 4 PERMIT THE PARTIES TO GIVE A BRIEF FOLLOW-UP QUESTIONING AS

10:12:28 5 APPROPRIATE, BUT THOSE QUESTIONS SHOULD NOT BE USED AS AN

10:12:31 6 OPPORTUNITY TO PRE-ARGUE THE CASE. THE QUESTIONS SHOULD BE

10:12:34 7 LIMITED TO FACTS THAT ARE ADDUCED DURING THE COURT'S

10:12:37 8 QUESTIONING OR ON THE QUESTIONNAIRES, BUT SHOULD NOT BE USED TO

10:12:45 9 ARGUE OR TEST THE JURY'S VIEWS WITH RESPECT TO LEGAL THEORIES

10:12:49 10 OR TRY TO ENSURE THE JURY TO ONE SIDE'S THEORY OF THE CASE OR

10:12:52 11 THEME OR THE OTHER SIDE'S THEORY OF THE CASE OR THEME.

10:13:02 12 NOW I WANT TO ASK, IS IT MS. CRANDELL? COULD YOU COME UP,

10:13:09 13 PLEASE, THANK YOU VERY MUCH.

10:13:10 14 I WOULD LIKE TO ASK YOU WHAT EXACTLY MR. AMIRI IS

10:13:12 15 REQUESTING, IN TERMS OF VOIR DIRE, THAT DIFFERS FROM THE

10:13:15 16 COURT'S PROCEDURE OF READING THE IN LIMINE -- I'M SORRY,

10:13:19 17 READING THE VOIR DIRE, DOING ANY NECESSARY FOLLOW-UP, AND THEN

10:13:23 18 ALLOWING COUNSEL TO DO ITS OWN FOLLOW-UP?

10:13:27 19 MS. CRANDELL: I THINK THAT WAS THE FOCUS OF OUR

10:13:29 20 REQUEST, YOUR HONOR. SO AS LONG AS YOU ARE ALLOWING FOLLOW-UP

10:13:32 21 QUESTIONS CONDUCTED BY THE ATTORNEYS, THAT WOULD BE OUR

10:13:36 22 REQUEST.

10:13:36 23 THE COURT: GREAT. ALL RIGHT. THANK YOU VERY MUCH.

10:13:38 24 AND YOU CAN BE SEATED. THANK YOU, COUNSEL.

10:13:43 25 WHETHER TO ALLOW QUESTIONING BY COUNSEL IS WITHIN THE

10:13:45 1 COURT'S DISCRETION. AND AGAIN, IT IS THIS COURT'S PRACTICE TO
10:13:48 2 ALLOW SOME QUESTIONING BY COUNSEL. IN A CASE LIKE THIS, ONE
10:13:51 3 WHERE MANY, IF NOT ALL THE POTENTIAL JURORS ARE LIKELY TO HAVE
10:13:55 4 SOME OPINION ABOUT THE POLICE, POSITIVE OR NEGATIVE, IT IS
10:13:59 5 IMPORTANT THAT THE COURT EXERCISE EVEN MORE CONTROL, NOT LESS,
10:14:03 6 NOT LESS, OVER THE VOIR DIRE, TO ENSURE THAT THOSE PREJUDICES
10:14:07 7 ARE OR ARE NOT SUCH THAT CONDUCT QUALIFICATIONS AS NECESSARY,
10:14:11 8 AND OF EQUAL IMPORTANCE NOT OF THE CHARACTER THAT MIGHT TAINT
10:14:15 9 THE REST OF THE JURY BY HEARING JURORS SAY NEGATIVE OR POSITIVE
10:14:19 10 THINGS ABOUT THE POLICE IN A PUBLIC FORUM WHICH MAY INFLUENCE
10:14:26 11 OTHER JURORS INAPPROPRIATELY.

10:14:27 12 SO THAT'S WHY THE COURT WILL ATTEND, AS IT DOES IN CASES
10:14:30 13 OF SOME NOTORIETY AND SOME EMOTIONAL -- LIKELY EMOTIONAL
10:14:37 14 RESPONSE BY POTENTIAL JURORS TO EXERCISE GREATER CONTROL, AND
10:14:41 15 IF I THINK THAT THE QUESTIONS BY EITHER SIDE ARE GOING BEYOND
10:14:45 16 WHAT THE COURT ALLOWS, I WILL BE SURE TO TELL YOU AND POLITELY
10:14:50 17 ASK YOU TO MOVE ON TO SOMETHING ELSE.

10:14:54 18 AND ALSO, BY THE WAY, THE COURT AGREES WITH THE
10:14:56 19 GOVERNMENT'S ANALYSIS IN DOCKET NUMBER 291 THAT MR. AMIRI HAS
10:14:59 20 NOT SHOWN ANY PREJUDICE IN THE JURY POOL THAT CANNOT BE ROOTED
10:15:03 21 OUT THROUGH STANDARD VOIR DIRE.

10:15:07 22 THE COURT POSTED ITS STANDARD JURY QUESTIONNAIRE AND VOIR
10:15:11 23 DIRE AND THE DEADLINE TO OBJECT WAS ON FEBRUARY 17TH. THE
10:15:15 24 COURT WILL ADD ALL OF THE CASE-SPECIFIC QUESTIONS PROPOSED BY
10:15:18 25 THE PARTIES TO THE JURY QUESTIONNAIRE, EXCEPT FOR NUMBER 7.

10:15:23 1 NUMBER 7 MAY ENCOURAGE INDEPENDENT RESEARCH AHEAD OF JURY
10:15:29 2 SELECTION, WHICH HAS HAPPENED UNFORTUNATELY, IN THE COURT'S
10:15:31 3 EXPERIENCE. IN FACT, I HAD A JUROR IN A CIVIL CASE WHO SAID HE
10:15:34 4 WOULD BE THE BEST POSSIBLE JUROR BECAUSE HE REVIEWED THE ENTIRE
10:15:37 5 DOCKET BEFORE, SO HE WAS EXTREMELY KNOWLEDGEABLE AND WOULD BE A
10:15:41 6 GREAT JUROR. OF COURSE WE COUNT -- WE DID NOT LAUGH, BUT WE
10:15:45 7 DID THANK HIM AND EXCUSE HIM. AND I WORRY ABOUT THAT.
10:15:51 8 AND JURORS HAVE BEEN FOUND TO, WHEN THEY GET SUMMONED AND
10:15:54 9 THEY DON'T KNOW THE NAME OF THE CASE, THEY WILL DO RESEARCH ON
10:15:56 10 THE DOCKET AND FIGURE OUT WHAT KIND OF CASE IT IS AND THEN READ
10:15:59 11 THE DOCKET OR DO RESEARCH, WHICH WE DISQUALIFY THEM AND IT
10:16:04 12 WOULD BE VERY UPSETTING TO THE COURT.
10:16:06 13 AFTER REVIEWING THE SURVEY RESPONSES FROM POTENTIAL
10:16:08 14 JURORS, THE PARTIES WILL NEED TO MEET AND CONFER REGARDING
10:16:13 15 EXCUSES FOR CAUSE AND HARDSHIP AND WILL PROVIDE THAT
10:16:15 16 INFORMATION TO THE COURT PRIOR TO JURY SELECTION. I WILL SET A
10:16:19 17 DATE ONCE WE RECEIVE THE RESPONSES.
10:16:22 18 NOW I HAVE TO SAY THAT IN RECENT TRIALS THAT THIS COURT
10:16:28 19 HAS HAD, COUNSEL HAS DONE A GOOD JOB IN FOCUSING ON THOSE
10:16:33 20 EXCUSES THAT SUMMARILY SHOULD BE GRANTED, RECOGNIZING THAT THE
10:16:40 21 COURT, AND AS YOU WILL HEAR WHEN WE ARE ACTUALLY IN THE
10:16:42 22 SELECTION PROCESS, THE COURT DOES NOT -- I'M VERY STRICT WHEN
10:16:49 23 IT COMES TO EXCUSES FOR CAUSE, BECAUSE IN MY VIEW IT'S THE
10:16:56 24 OBLIGATION OF EVERY PERSON, IF QUALIFIED, TO SERVE ON A JURY
10:17:02 25 AND WE ALL HAVE REASONS FOR NOT BEING IN THE JURY BOX.

10:17:07 1 SO I WILL ASK COUNSEL WHEN THEY -- TO KEEP IN MIND WHEN
10:17:13 2 THEY MEET IN CONFER THAT THE COURT IS PRETTY STRICT WITH
10:17:17 3 RESPECT TO EXCUSES FOR CAUSE.

10:17:20 4 SO ONE OF THE THINGS THAT I THINK -- THIS IS SOMETHING
10:17:26 5 THAT HAS COME UP IN THE COURT'S MIND BASED UPON THE NATURE OF
10:17:28 6 THIS CASE.

10:17:29 7 SO WE INTEND TO SUMMON 90 PANELISTS, AND ALTHOUGH I DON'T
10:17:39 8 THINK WE CAN GET 90 PANELISTS IN THIS COURTROOM, WE CAN
10:17:43 9 PROBABLY GET 70 OR 75. WHAT I INTEND TO DO IS START WITH THE
10:17:51 10 75 OR AS MANY AS WE CAN SQUEEZE IN IN THE COURT, FOR THE
10:17:58 11 INITIAL VOIR DIRE. IF WE ARE UNABLE, BASED UPON THE COURT'S
10:18:04 12 RULING WITH RESPECT TO EXCUSALS, TO SEAT A JURY, WE WILL BRING
10:18:10 13 IN THE OTHER TRANCHE OF PEOPLE, WHATEVER IS LEFT, WHICH WOULD
10:18:14 14 BE A SMALL NUMBER, ACTUALLY, WE WOULD BE ABLE TO GO THROUGH IT
10:18:16 15 PRETTY QUICKLY, BUT I THINK WITH 75 OR SO, WE WILL BE ABLE TO
10:18:21 16 GET A JURY GIVEN THE NUMBER OF PEREMPTORIES AND THE STANDARD
10:18:26 17 EVEN EXPANDED NUMBER OF EXPECTED EXCUSALS FOR CAUSE.

10:18:32 18 SO THAT'S MY PLAN. IF I COULD GET MORE IN THE COURTROOM,
10:18:35 19 I WOULD PUT AS MANY IN. BECAUSE THIS COURT USES WHAT'S CALLED
10:18:40 20 THE MODIFIED ARIZONA METHOD OF JURY SELECTION WHICH MEANS THAT
10:18:45 21 THE INQUIRY, THE VOIR DIRE IS TO THE ENTIRETY OF THE ARRAY.

10:18:50 22 WHY DO WE DO THAT? WE DO THAT BECAUSE IF WE DO 12 PACKS
10:18:55 23 OR 6 PACKS OR WHATEVER THEY DO IN STATE COURT, SOME OTHER
10:18:59 24 COURTS, THEN THE PARTIES REALLY, WHEN THEY EXERCISE THEIR
10:19:03 25 PEREMPTORIES, HAVE NO IDEA WHAT'S LOOMING IN THE BACK BENCHES

10:19:07 1 IF YOU WILL, OR BEHIND THESE JURORS, BUT THIS WAY YOU WILL HAVE
10:19:11 2 A SENSE OF ALL THE PANELISTS, THEIR RESPONSES, SO THAT WHEN YOU
10:19:17 3 EXERCISE YOUR PEREMPTORIES YOU WILL HAVE A GOOD SENSE OF WHO
10:19:20 4 ARE THE OTHER PEOPLE THAT MIGHT GET STUCK IN THE BOX AFTER
10:19:24 5 THESE JURORS ARE EXCUSED. AND SO WE USE THE MODIFIED ARIZONA
10:19:28 6 METHOD, WE ADDRESS ALL QUESTIONS TO THE ENTIRE ARRAY.
10:19:32 7 NOW, SO I REQUIRE THE PARTIES TO EXERCISE THEIR PEREMPTORY
10:19:40 8 CHALLENGES SIMULTANEOUSLY AND BLIND AS TO THE OTHER PARTY'S
10:19:45 9 SELECTION UNTIL THE JURY IS FINAL.
10:19:46 10 IN OTHER WORDS, UNLIKE SOME COURTS, IN THIS COURT WE DO
10:19:49 11 NOT PASS THE LIST OF JURORS BACK AND FORTH, YOU EXERCISE YOUR
10:19:55 12 PEREMPTORIES SIMULTANEOUSLY WITH EACH OTHER. OBVIOUSLY THE
10:20:01 13 DEFENDANTS CAN SHARE INFORMATION BUT I DON'T REQUIRE EITHER
10:20:10 14 SIDE TO DISCLOSE TO THE OTHER SIDE WHO THEY HAVE STRICKEN.
10:20:14 15 SO EACH DEFENDANT WILL HAVE TEN PEREMPTORY CHALLENGES, AND
10:20:18 16 THE DEFENDANTS, AS I SAID, DO NOT NEED TO EXERCISE THEIR
10:20:22 17 PEREMPTORY CHALLENGES BLIND TO EACH OTHER. SO THE DEFENDANTS
10:20:27 18 CAN SHARE INFORMATION ABOUT WHAT PEREMPTORIES THEY ARE
10:20:31 19 EXERCISING SO THEY DON'T UNDULY OVERLAP AND USE MORE THAN THEY
10:20:38 20 NEED TO USE. AND I'M GOING TO SEAT 12 JURORS WITH FOUR
10:20:43 21 ALTERNATES.
10:20:45 22 NOW WITH RESPECT TO ALTERNATES, THE WAY I DO IT, I DON'T
10:20:52 23 TELL THE JURORS, YOU WILL KNOW BUT THEY WILL NOT KNOW, WHO IS
10:20:57 24 AN ALTERNATE. WE BASICALLY MIX THEM UP, PUT THEM IN THE JURY
10:21:00 25 BOX AND WE TELL THEM WE ARE NOT LETTING THEM KNOW WHO THE

10:21:04 1 PEREMPTORIES ARE UNTIL AFTER CLOSING ARGUMENTS. THAT WAY
10:21:08 2 NOBODY THINKS THAT THEY ARE, IF YOU WILL, ON THE BENCH OR IN
10:21:12 3 RESERVE, AND THEY ALL PAY ATTENTION AND THEY KIND OF AT THE
10:21:17 4 VERY END, THEY TRY TO THINK ABOUT WHO MIGHT BE THE ALTERNATES,
10:21:21 5 BUT THERE IS NO WAY TO KNOW, BUT YOU ALL WILL KNOW AND THE
10:21:24 6 COURT WILL KNOW WHO THE ALTERNATES ARE.

10:21:27 7 SO ALL CHALLENGES WILL BE EXERCISED OUTSIDE THE PRESENCE
10:21:31 8 OF THE JURY. EACH SIDE HAS TWO ADDITIONAL PEREMPTORY
10:21:37 9 CHALLENGES WITH RESPECT TO -- WHICH MAY BE USED ONLY TO REMOVE
10:21:41 10 ALTERNATE JURORS. AND THAT'S UNDER FEDERAL RULE OF CRIMINAL
10:21:44 11 PROCEDURE 24 (C) (4) (A) WHICH REQUIRES A SEPARATE SELECTION FOR
10:21:53 12 ALTERNATES VIS A VI THE PRIMARY JURY.

10:21:59 13 THESE CHALLENGES WILL BE EXERCISED AFTER THE PARTIES HAVE
10:22:02 14 EXERCISED THEIR PEREMPTORY CHALLENGES AS TO THE REGULAR JURORS.

10:22:06 15 COUNSEL, AS I SAID, WILL KNOW WHO THE ALTERNATES ARE BUT
10:22:09 16 THE JURORS WILL NOT AND WE WILL EXCUSE THE ALTERNATES AFTER
10:22:13 17 CLOSING ARGUMENTS. THEY WILL BE EXCUSED FROM DELIBERATIONS BUT
10:22:19 18 WILL REMAIN ON CALL AND SUBJECT TO THE COURT'S PROPER CONDUCT
10:22:23 19 INSTRUCTION UNTIL THE JURORS REACH A VERDICT AND THEN THEY WILL
10:22:28 20 BE RELIEVED.

10:22:29 21 SO IF SOMETHING HAPPENS DURING DELIBERATION AND WE NEED TO
10:22:32 22 SUBSTITUTE AN ALTERNATE, THEY WILL BE PRISTINE WITH RESPECT TO
10:22:37 23 THEIR POTENTIAL SERVICE AS REGULAR JURORS.

10:22:42 24 AND SO THE ORDER OF CHALLENGES AND/OR EXCUSALS ARE AS
10:22:45 25 FOLLOWS:

10:22:46 1 FIRST, HARDSHIP OR TIME, TO THE EXTENT JURORS HAVE NOT
10:22:52 2 RESPONDED IN THEIR QUESTIONNAIRES AND COUNSEL HAS NOT AGREED,
10:22:56 3 THAT WILL BE THE FIRST GROUP THAT WE WILL CONSIDER.
10:23:04 4 WITH RESPECT TO THE SECOND ONE, THE SECOND APPROACH WILL
10:23:09 5 BE WILL BE FOR CAUSE, CHALLENGES FOR CAUSE. THE THIRD WILL BE
10:23:13 6 PEREMPTORY CHALLENGES, AND THE FOURTH WOULD BE BATSON
10:23:16 7 CHALLENGES, ONCE WE HAVE A PUTATIVE COMPLETE JURY AND WE KNOW
10:23:20 8 WHO THE PANELISTS ARE, OR THE POTENTIAL JURORS ARE, IF THERE IS
10:23:26 9 A BATSON ISSUE, YOU CAN RAISE THAT AT THAT PARTICULAR TIME AND
10:23:29 10 I WILL DEAL WITH IT.
10:23:30 11 NOW PROPOSED PRELIMINARY AND GENERAL JURY INSTRUCTIONS
10:23:36 12 HAVE BEEN POSTED, THE LAST DAY FOR OBJECTIONS IS FEBRUARY 17TH.
10:23:43 13 THE COURT HAS ALSO POSTED ITS INTENDED JURY SLIDE SHOW, AND
10:23:47 14 OBJECTIONS ARE DUE -- THE LAST DAY FOR OBJECTIONS ON THE 17TH
10:23:54 15 AND IT'S ALSO THE 17TH FOR OBJECTIONS TO THE JUROR SLIDE SHOW
10:24:00 16 THAT THE COURT SHOWS WHICH HAS THE BENEFIT OF EDUCATING THE
10:24:03 17 JURORS ON THE IMPORTANCE OF WHAT THEY ARE ABOUT TO UNDERTAKE
10:24:07 18 AND ALSO AS YOU WILL SEE, A SLIDE ABOUT ALL THE BOOKS THAT I'VE
10:24:14 19 READ ABOUT HOW TO GET OUT OF JURY DUTY FOR DUMMIES, AND THERE
10:24:17 20 ACTUALLY IS A BOOK ON THAT.
10:24:19 21 SO I HAVE READ THEM ALL, AND I ALSO HAVE A LITTLE SLIDE ON
10:24:23 22 WHO HAS ACTUALLY BEEN CALLED, INCLUDING CHIEF JUSTICE OF THE
10:24:27 23 SUPREME COURT, CHIEF JUSTICE OF THE CALIFORNIA SUPREME COURT,
10:24:28 24 AND NOT TO PUT TOO FINE A POINT ON IT, TAYLOR SWIFT, WHO DID
10:24:34 25 SERVE ON A JURY WHEN ASKED.

10:24:36 1 SO JURY PANELISTS MAY NOT HAVE HEARD OF THE CHIEF JUSTICE,

10:24:41 2 I'M SURE THEY HAVE HEARD OF TAYLOR SWIFT. SO I WILL LOOK

10:24:45 3 FORWARD TO GETTING ANY OBJECTION THAT YOU MIGHT HAVE TO EITHER

10:24:47 4 THE SUBSTANCE OF THOSE SLIDES OR THE ORDER OF THOSE SLIDES. I

10:24:51 5 TRY TO MAKE THEM AS NEUTRAL AS POSSIBLE FOR BOTH SIDES, BUT IF

10:24:55 6 ANY SIDE HAS ANY OBJECTION, PLEASE LET ME KNOW, PARTICULARLY IF

10:25:00 7 THERE ARE ANY CHANGES TO THE WITNESS LIST IN ACCORDANCE TO WHAT

10:25:03 8 I HAVE SAID TODAY BECAUSE I WILL BE READING THE NAMES OF THE

10:25:06 9 PROSPECTIVE WITNESSES AND ASKING THE JURORS IF THEY KNOW ANY OF

10:25:11 10 THE POTENTIAL WITNESSES, SO PLEASE PAY PARTICULAR ATTENTION TO

10:25:15 11 THAT.

10:25:18 12 BEFORE I MOVE ON, ARE THERE ANY QUESTIONS WITH RESPECT TO

10:25:21 13 THE WAY THE COURT CONDUCTS VOIR DIRE?

10:25:25 14 OKAY. YES. COME ON UP, PLEASE, COUNSEL.

10:25:32 15 AND DO ME FAVOR, WOULD YOU MIND REIDENTIFYING YOURSELF FOR

10:25:35 16 THE COURT REPORTER.

10:25:36 17 MS. LOPES: NICOLE LOPES.

10:25:38 18 THE COURT: THANK YOU.

10:25:38 19 MS. LOPES: MY QUESTION WAS IS THERE A THIRD SET OF

10:25:40 20 JURY INSTRUCTIONS THAT WILL BE COMING OUT ABOUT THE SUBSTANTIVE

10:25:43 21 CRIMES?

10:25:45 22 THE COURT: BESIDE, AFTER -- OTHER THAN THE

10:25:48 23 PRELIMINARY THAT I'VE -- NO, JUST THOSE. DID YOU HAVE

10:25:53 24 SOMETHING PARTICULARLY IN MIND? BECAUSE TYPICALLY WE DON'T, WE

10:25:56 25 JUST TALK ABOUT WHAT THE PARTIES AGREE IS THE STATEMENT OF THE

10:26:00 1 CASE, THE NEUTRAL STATEMENT OF THE CASE.

10:26:03 2 IS THERE SOMETHING ELSE YOU HAD IN MIND? BECAUSE I

10:26:05 3 HAVEN'T SEEN ANYTHING YOU SUBMITTED.

10:26:06 4 MS. LOPEZ: NOT AS TO VOIR DIRE, YOUR HONOR, I WAS

10:26:09 5 JUST ASKING IF WE HAD A THIRD SET OF JURY INSTRUCTIONS, BECAUSE

10:26:12 6 I JUST NOTICED THERE WAS NOTHING IN THE JURY INSTRUCTIONS THAT

10:26:15 7 INSTRUCTS ON THE ACTUAL CRIMES. I DID SUBMIT SEPARATE JURY

10:26:18 8 INSTRUCTIONS AS TO THAT BECAUSE I DISAGREED WITH THE GOVERNMENT

10:26:21 9 EXCLUDING THE ELEMENTS OF THE CRIME. SO THAT'S -- SINCE THAT'S

10:26:26 10 WHAT THE JURY IS GOING TO BE DELIBERATING OVER.

10:26:27 11 THE COURT: ALL RIGHT. I WILL TAKE ANOTHER LOOK AT

10:26:29 12 THAT IN LIGHT OF WHAT YOU ARE SAYING AND SEE IF I MISSED

10:26:33 13 SOMETHING, WHICH IS QUITE POSSIBLE. THANK YOU FOR BRINGING

10:26:35 14 THAT TO MY ATTENTION.

10:26:36 15 MS. LOPEZ: THANK YOU, YOUR HONOR.

10:26:37 16 THE COURT: SO JUST IN TERMS OF -- YEAH, COME ON

10:26:40 17 FORWARD, COUNSEL, YOU LOOK LIKE YOU HAVE SOMETHING. AND JUST

10:26:42 18 REIDENTIFY YOURSELF.

10:26:43 19 MS. CRANDELL: YES. JANELLE CRANDELL.

10:26:45 20 DID THE COURT PROVIDE ANY KIND OF DECISION WITH THE

10:26:47 21 REQUEST FOR THE PEREMPTORY CHALLENGES THAT WE ALSO REQUESTED IN

10:26:52 22 OUR MOTION?

10:26:53 23 THE COURT: I DIDN'T, BUT EXCEPT IMPLICITLY BY GIVING

10:26:59 24 YOU THE NUMBER THAT I'M ALLOWING. YES, I DID TAKE THAT INTO

10:27:03 25 ACCOUNT. THANK YOU VERY MUCH.

10:27:03 1 MS. CRANDELL: THANK YOU.

10:27:04 2 THE COURT: ALL RIGHT.

10:27:05 3 I JUST WANTED TO SAY THAT IN TERMS OF TIMING, SO TYPICALLY

10:27:14 4 IF WE HAVE TIME AT THE CONCLUSION OF JURY SELECTION, WHETHER

10:27:20 5 IT'S IN ONE DAY OR WE HAVE TO MOVE IT TO THE NEXT, TO TWO DAYS,

10:27:24 6 I HAVE TO SAY IN TWENTY SOME ODD YEARS ON THE BENCH, I'VE NEVER

10:27:29 7 HAD TO GO TO THE SECOND DAY, WE WOULD GO A LITTLE LATER, WE

10:27:33 8 WOULD GET IT DONE SO WE GET THOSE JURORS WHO ARE ULTIMATELY

10:27:38 9 GOING TO BE EXCUSED TO COME BACK, BECAUSE I ALWAYS WORRY THEY

10:27:38 10 WON'T COME BACK, SO I TRY TO FINISH IT.

10:27:40 11 BUT IF WE HAVE ENOUGH TIME, WHENEVER THAT DAY IS, I WOULD

10:27:43 12 TYPICALLY DO THE PRE-INSTRUCTION RIGHT THEN AND THERE WHILE

10:27:48 13 THEY ARE -- JUST TO KIND OF GET THEM ENURED TO THE RULES AND

10:27:51 14 BEHAVIOR AND ALL OF THAT, SO I GIVE THE PRELIMINARY

10:27:54 15 INSTRUCTIONS THEN, AND -- BUT I DO NOT SWEAR THE JURY PRIOR TO

10:28:00 16 THE TESTIMONY BEGINNING. I DON'T THINK IT'S -- IT'S

10:28:06 17 APPROPRIATE PRACTICE, BUT IT'S NOT FAIR TO THE GOVERNMENT TO

10:28:09 18 SWEAR THE JURY PREMATURELY BECAUSE JEOPARDY MAY ATTACH, SO I

10:28:13 19 DON'T DO THAT, BUT THEY WILL BE INSTRUCTED AS TO THEIR PROPER

10:28:16 20 CONDUCT.

10:28:17 21 SO I WANT TO TALK ABOUT EXHIBITS EVIDENCE AND ADDITIONAL

10:28:20 22 WITNESS ISSUES.

10:28:21 23 FIRST OF ALL, STIPULATIONS. THE STIPULATIONS FOR

10:28:26 24 AUTHENTICITY WERE VERY HELPFUL, THANKS COUNSEL. I WILL JUST

10:28:29 25 SAY FOR EVERYBODY'S BENEFIT, INCLUDING MOSTLY THE JURY AND THE

10:28:33 1 PROCESS, THE MORE STIPULATIONS YOU COULD MAKE, ESPECIALLY WITH
10:28:37 2 REGARD TO AUTHENTICITY, ADMISSIBILITY, FOUNDATION, ET CETERA,
10:28:43 3 THEN THE MORE OF THE JURORS' TIME WE WILL SAVE AND THE MORE
10:28:46 4 THEY WILL PAY ATTENTION TO YOUR PRESENTATIONS OF THE SUBSTANCE
10:28:48 5 OF THE CASE, AND JURORS DON'T REALLY LIKE TECHNICAL OBJECTIONS.
10:28:53 6 LET ME ASK STARTING WITH GOVERNMENT COUNSEL, HAVE YOU
10:28:59 7 DISCUSSED -- WELL, TO YOUR KNOWLEDGE, IS THE GOVERNMENT GOING
10:29:02 8 TO USE A SEPARATE COMPUTER PRESENTATION SYSTEM FROM DEFENSE
10:29:06 9 COUNSEL?
10:29:09 10 MR. KRISHNAMURTHY: YES, I BELIEVE WE WILL.
10:29:11 11 THE COURT: ALL RIGHT.
10:29:12 12 SO COUNSEL SHOULD BE SURE TO SCHEDULE A TRAINING SESSION
10:29:16 13 WITH THE COURTROOM DEPUTY AHEAD OF TRIAL TO MAKE SURE THAT THE
10:29:21 14 TECHNOLOGY GOES SMOOTHLY, BECAUSE THAT'S ANOTHER THING THAT
10:29:25 15 REALLY BUGS A JURY, AND NOT TO MENTION THE COURT, IF THERE ARE
10:29:28 16 GLITCHES IN PRESENTATION THAT COULD HAVE BEEN AVOIDED, I THINK
10:29:31 17 CASES WHERE YOU PRESENT EXHIBITS AND INFORMATION VISUALLY TO A
10:29:37 18 JURY WITHOUT GLITCHES, THE JURORS REALLY APPRECIATE THAT.
10:29:40 19 AND THEY EXPECT IT. YOU WILL SEE THEY WILL GET
10:29:43 20 CONDITIONED TO LOOK DOWN AT THEIR -- OH, THE JURY GETS
10:29:49 21 CONDITIONED TO HAVING EXHIBITS COME UP ON THEIR SCREENS.
10:29:55 22 JUST TO GO BACK TO THE POINT REGARDING THE JURY
10:29:58 23 INSTRUCTIONS, I WAS JUST THINKING THAT, SO ANY FINAL JURY
10:30:01 24 INSTRUCTIONS THAT DEAL WITH THE APPROPRIATE ELEMENTS OF THE --
10:30:04 25 ALL THE ELEMENTS AND THE SUBSTANTIVE INSTRUCTIONS, THOSE ARE

10:30:08 1 DISCUSSED DURING THE CHARGING CONFERENCE WHEN WE ARE GETTING
10:30:11 2 CLOSE TO THE END OF THE PRESENTATION.

10:30:13 3 AND THOSE WILL ALL BE IRONED OUT AND COUNSEL WILL KNOW
10:30:16 4 WELL IN ADVANCE OF WHAT THOSE ARE, BUT WE DON'T GENERALLY
10:30:21 5 PRESENT THOSE IN THE PRELIMINARY INSTRUCTIONS, THEY WILL BE IN
10:30:24 6 THE FINAL INSTRUCTIONS, SO YOU WILL HAVE EVERY OPPORTUNITY TO
10:30:26 7 ARGUE AND URGE ON THE COURT, THE INSTRUCTIONS THAT EACH SIDE
10:30:29 8 REQUESTS.

10:30:32 9 SO WITH RESPECT TO -- SO MAKE SURE YOU HAVE THE TRAINING.
10:30:40 10 AND WITH RESPECT TO THE EXHIBITS, THE PARTIES SHOULD PROVIDE
10:30:53 11 THE COURT WITH TWO USB DRIVES WITH EXHIBITS AT THE START OF
10:30:59 12 TRIAL, TO THE EXTENT YOU HAVE THEM, AND YOU SHOULD HAVE THEM.
10:31:02 13 AND AT THE END OF EACH TRIAL DAY, THE PARTIES SHALL MEET WITH
10:31:06 14 THE COURTROOM DEPUTY TO CONFIRM WHICH EXHIBITS HAVE BEEN
10:31:09 15 ADMITTED INTO EVIDENCE.

10:31:11 16 IN OTHER WORDS, THE COURTROOM DEPUTIES ARE EXCELLENT AT
10:31:14 17 KEEPING TRACK, BUT IT'S REALLY UP TO COUNSEL TO MAKE SURE THAT
10:31:18 18 ONLY -- THAT A, THE EXHIBITS YOU THOUGHT YOU WERE OFFERING AND
10:31:23 19 THAT YOU THOUGHT THE COURT RULED ON WERE ACTUALLY IN EVIDENCE,
10:31:27 20 AND AT THE CLOSE OF THE TRIAL, PARTIES SHALL PREPARE A
10:31:31 21 DIRECTORY OF ALL THE EXHIBITS THAT WILL GO TO THE JURY ON A
10:31:37 22 NORTHERN DISTRICT OF CALIFORNIA COMPUTER, WE CALL IT CAND PC,
10:31:42 23 WHICH IS A DUMB COMPUTER WHICH THE JURY WILL HAVE TO VIEW
10:31:45 24 EXHIBITS, BUT NOT ANYTHING ELSE.

10:31:50 25 AND SO THE DIRECTORY REALLY IS JUST A LIST OF EXHIBITS,

10:31:54 1 THE NAME OF THE EXHIBIT AND THE NUMBER OF THE EXHIBIT. SO IF
10:31:59 2 THE JURY WANTS TO FIND A VIDEO OR WHATEVER, THEY HAVE THE
10:32:03 3 DIRECTORY BOTH ON PAPER AND ON THE CAND PC SO THEY CAN GO RIGHT
10:32:08 4 TO THAT AND CLICK IT AND OPEN THAT PARTICULAR EXHIBIT. SO WE
10:32:11 5 WILL TALK MORE ABOUT THAT WHEN WE GET INTO THE CHARGING
10:32:14 6 CONFERENCE, ET CETERA.

10:32:15 7 I URGE THE PARTIES TO PRESENT AS MUCH EVIDENCE AS POSSIBLE
10:32:19 8 ELECTRONICALLY, AND THEN WITH RESPECT TO THE CAND PC, THERE IS
10:32:26 9 A PORTION OF THE COURT'S WEBSITE WHICH GIVES INSTRUCTIONS ON
10:32:31 10 ELECTRONIC JURY PRESENTATION OF EVIDENCE AND THE USE OF THE
10:32:34 11 CAND PC. SO TO THE EXTENT YOU ARE NOT FAMILIAR WITH THAT, THAT
10:32:37 12 WILL GIVE YOU EVERYTHING YOU NEED. SHOULD YOU NEED DISCUSSION
10:32:40 13 WITH THE COURT'S I.T. DEPARTMENT, WE WILL BE HAPPY TO MAKE THAT
10:32:44 14 AVAILABLE FOR YOU.

10:32:48 15 NOW WITH RESPECT TO OBJECTIONS, THE COURT HAS REVIEWED A
10:32:52 16 NUMBER OF OBJECTIONS THAT HAVE BEEN RECEIVED BY THE COURT. THE
10:32:56 17 COURT HAS REVIEWED THEM -- WILL REVIEW THEM, BUT I WILL NOT
10:33:00 18 PRE-RULE ON THEM BECAUSE I FIND THAT THERE'S ONLY SO MUCH WE
10:33:03 19 CAN DO IN THESE CONFERENCES AND I REALLY NEED TO HEAR THE
10:33:06 20 EVIDENCE IN -- THE EVIDENCE THAT WE HEAR AT THE TRIAL IN THE
10:33:19 21 CONTEXT.

10:33:23 22 ALL RIGHT. SO ANOTHER MISCELLANEOUS ISSUE, I DON'T WANT
10:33:29 23 WHAT I WOULD CALL "DEAD AIR." WHAT I MEAN BY DEAD AIR IS
10:33:37 24 EXACTLY WHAT IT SOUNDS LIKE. IN OTHER WORDS, I DON'T WANT --
10:33:40 25 IF WE ARE GOING TO SIT UNTIL 4:30, I DON'T WANT COUNSEL TO SAY,

10:33:44 1 WELL IT'S 3:30, WE DON'T HAVE ANY MORE WITNESSES. THAT WILL BE
10:33:48 2 VERY UPSETTING TO THE COURT. I WOULD RATHER INCONVENIENCE
10:33:51 3 WITNESSES RATHER THAN INCONVENIENCE THE COURT. SO PLEASE MAKE
10:33:59 4 SURE THAT YOU HAVE SUFFICIENT -- IT DOESN'T HAVE TO BE A
10:34:03 5 WITNESS, SUFFICIENT MATERIAL TO FILL EVERY MINUTE OF THE COURT
10:34:07 6 DAYS, BECAUSE IT'S A ZERO SUM GAME, IT COMES OUT AT THE END.
10:34:11 7 AS I SAID, I DON'T IMPOSE TIME DEADLINES ON CRIMINAL
10:34:15 8 CASES, I DO IT IN CIVIL, PLEASE RESPECT THAT SINCE THE
10:34:19 9 GOVERNMENT HAS THE BURDEN, THEY HAVE MORE WITNESSES, INITIALLY
10:34:24 10 IT APPLIES TO THE GOVERNMENT BUT ALSO TO THE DEFENSE.
10:34:31 11 LET ME ASK GOVERNMENT COUNSEL, WILL THE GOVERNMENT BE
10:34:34 12 REQUESTING DAILY TRANSCRIPTS?
10:34:39 13 MR. KRISHNAMURTHY: YES, WE WILL.
10:34:41 14 THE COURT: ALL RIGHT. DO THE DEFENDANTS INTEND TO
10:34:43 15 REQUEST DAILY TRANSCRIPTS?
10:34:46 16 MS. CRANDELL: YES, YOUR HONOR.
10:34:48 17 THE COURT: ALL RIGHT.
10:34:49 18 MS. LOPES: US AS WELL, YES.
10:34:50 19 THE COURT: OKAY. SO ALL PARTIES DO.
10:34:52 20 PLEASE COOPERATE WITH THE COURT REPORTER WITH RESPECT TO
10:34:57 21 ORDERING THOSE AND MAKE SURE YOU COMPLY WITH ALL THEIR
10:35:04 22 REQUIREMENTS, ET CETERA.
10:35:07 23 NOW I WANT TO TALK ABOUT ONE SORT OF, I WILL CALL IT
10:35:10 24 ELEPHANT IN THE ROOM. THE COURT NOTES, AND I NOTED THIS IN AN
10:35:14 25 ORDER WHICH COUNSEL RESPONDED TO, ON THE ISSUE OF MR. WENGER'S

10:35:20 1 APPEAL, I WANT TO JUST SAY THE FOLLOWING TO MR. WENGER, AND IF
10:35:28 2 HIS COUNSEL IS INVOLVED IN ADVISING HIM AS COUNSEL, THE COURT
10:35:32 3 STILL BELIEVES IT HAS JURISDICTION OVER THIS ACTION DESPITE
10:35:37 4 MR. WENGER'S APPARENT PRO SE APPEAL OF ITS LATEST ORDER DENYING
10:35:41 5 MR. WENGER'S MOTION TO SUPPRESS. A DISTRICT COURT LOSES ITS
10:35:45 6 POWER TO PROCEED ONLY IF THE DEFENDANT'S INTERLOCUTORY CLAIM OR
10:35:50 7 APPEAL IS CONSIDERED IMMEDIATELY APPEALABLE. AND I'M CITING
10:35:54 8 FOR THAT UNITED STATES V. HICKEY, H-I-C-K-E-Y, 580 F.3D 922 AT
10:36:02 9 928, NINTH CIRCUIT 22,009 "FILING AN APPEAL FROM AN
10:36:07 10 UNAPPEALABLE DECISION DOES NOT DIVEST THE DISTRICT COURT OF
10:36:12 11 JURISDICTION." THE SUPREME COURT HAS MADE CLEAR THAT "PRETRIAL
10:36:15 12 ORDERS GRANTING OR DENYING A MOTION TO SUPPRESS EVIDENCE IN A
10:36:19 13 FEDERAL CRIMINAL TRIAL ARE NOT APPEALABLE UNTIL AFTER TRIAL."
10:36:25 14 AND I'M CITING FOR THAT DIBELLA V. UNITED STATES, 369 U.S.
10:36:32 15 121 AT 127, DECIDED IN 1962.
10:36:37 16 ACCORDINGLY, THE COURT WILL PROCEED, UNLESS AND UNTIL
10:36:40 17 ORDERED BY A HIGHER COURT, INCLUDING THE NINTH CIRCUIT OR THE
10:36:43 18 SUPREME COURT, NOT TO PROCEED, THE COURT WILL PROCEED WITH THIS
10:36:46 19 TRIAL NOTWITHSTANDING MR. WENGER'S PRO SE APPEAL.
10:36:52 20 AND I JUST WANT TO SAY ONE OTHER THING AS AN ASIDE. I
10:36:55 21 MENTIONED THIS AT THE VERY BEGINNING WHICH IS FOR THOSE OF YOU
10:36:59 22 WHO HAVE NOT TRIED CASES IN THIS COURT, I DO NOT ALLOW SPEAKING
10:37:02 23 OBJECTIONS, MEANING IF YOU HAVE AN OBJECTION, USUALLY
10:37:06 24 "OBJECTION" IS FINE ENOUGH, OR IF YOU WANT TO ADD A CITATION TO
10:37:09 25 A LOCAL RULE OR A CASE, YOU CAN CITE THAT, BUT PLEASE DON'T

10:37:13 1 GIVE A SPEECH ABOUT WHY THIS IS OBVIOUSLY INCOMPETENT EVIDENCE

10:37:21 2 OR WHATEVER, JUST GIVE ME A RULE, I WILL RULE ON IT. I THINK I

10:37:25 3 HAVE A PRETTY GOOD IDEA OF WHAT THE FEDERAL RULES OF EVIDENCE

10:37:29 4 OF THE CASE REQUIRES WITH RESPECT TO ADMISSION OF EVIDENCE.

10:37:32 5 JUST SIMPLY SAY "OBJECTION, HEARSAY" OR "OBJECTION,

10:37:37 6 403(B)," OR WHATEVER, "404(B)" WHATEVER IT IS. IF I WANT TO

10:37:42 7 HEAR MORE ARGUMENT THEN I WILL EITHER BRIEFLY HEAR IT IN FRONT

10:37:46 8 OF THE JURY OR MORE LIKELY HAVE A SIDEBAR, WHICH REMINDS ME

10:37:51 9 THAT SIDEBARS ARE VERY RARE IN MY COURT, I FIND NO NEED TO HAVE

10:37:55 10 THEM, MOST OF THE TIME, BECAUSE MOST OF THOSE ISSUES THAT ARE

10:38:00 11 RAISED, I KNOW WHAT THEY ARE AND I CAN RULE ON COUNSEL'S

10:38:04 12 CONCERN, IF ANY, AND MANY OF THEM CAN BE DEALT WITH OUTSIDE OF

10:38:08 13 THE HEARING OF THE JURY BEFORE COURT STARTS IN THE MORNING.

10:38:12 14 SO AS YOU CAN SEE, WHAT THE COURT IS TRYING TO DO HERE IS

10:38:16 15 SQUEEZE ALL OF THE UNNECESSARY AIR OUT OF THIS CASE SO IT'S ALL

10:38:19 16 A JURY CASE AND YOU CAN ALL PRESENT YOUR CASES AND GO FORWARD

10:38:22 17 FROM THERE.

10:38:24 18 SO THAT CONCLUDES THE COURT'S REMARKS. DOES GOVERNMENT

10:38:27 19 COUNSEL HAVE ANYTHING ADDITIONAL THAT THEY WOULD LIKE TO RAISE

10:38:29 20 AT THIS TIME?

10:38:30 21 MR. KRISHNAMURTHY: YES, YOUR HONOR.

10:38:32 22 I WAS ACTUALLY HOPING TO BRIEFLY SEEK CLARIFICATION ON THE

10:38:35 23 COURT'S ORDER WITH RESPECT TO MR. AMIRI'S SECOND MOTION IN

10:38:39 24 LIMINE, THE MOTION TO EXCLUDE RACIALLY DEROGATORY LANGUAGE.

10:38:44 25 IN READING THE COURT'S ORDER, THE COURT REFERENCED THE

10:38:47 1 GOVERNMENT'S AGREEMENT WITH MR. AMIRI'S POSITION, BUT THE

10:38:53 2 GOVERNMENT ONLY AGREED WITH MR. AMIRI'S POSITION IN PART IN

10:38:57 3 WHICH IT AGREED THAT RACIALLY DEROGATORY LANGUAGE THAT WAS NOT

10:38:57 4 CONNECTED TO AN INTENT TO USE FORCE WAS EXCLUDABLE, BUT IT DID

10:39:02 5 NOT AGREE THAT SUCH LANGUAGE THAT WAS CONNECTED TO INTENT TO

10:39:05 6 USE FORCE OR EXPRESSIONS REGARDING FORCE WERE EXCLUDABLE.

10:39:10 7 WAS THE COURT ADOPTING THE GOVERNMENT'S POSITION OR

10:39:13 8 MR. AMIRI'S POSITION?

10:39:15 9 THE COURT: WELL I THINK THAT I NEED TO RECONSIDER

10:39:17 10 THAT BECAUSE I SAID GENERALLY, AS A GENERAL MATTER, THE USE OF

10:39:22 11 THOSE TYPES OF -- THAT TYPE OF LANGUAGE -- IS SO INFLAMMATORY

10:39:28 12 IN THIS DAY AND AGE THAT THE COURT USUALLY WOULD EXERCISE IT'S

10:39:33 13 403 DISCRETION.

10:39:35 14 I UNDERSTAND THE GOVERNMENT'S POSITION THAT SOMEHOW THAT

10:39:39 15 INFORMS THE INTENT OF MR. AMIRI IN DOING THE THINGS YOU CLAIM

10:39:44 16 HE DID. I TAKE IT THAT'S YOUR PRINCIPAL POINT, IS IT NOT?

10:39:48 17 MR. KRISHNAMURTHY: CORRECT. AND MORE SPECIFICALLY,

10:39:50 18 THERE ARE CERTAIN COMMUNICATIONS WHERE THERE ARE BOTH

10:39:54 19 REFERENCES TO RACIALLY INFLAMMATORY LANGUAGE AND EXPRESSIONS OF

10:39:57 20 INTENT TO USE FORCE.

10:39:59 21 THE COURT: ALL RIGHT. WELL I WILL REEVALUATE THAT

10:40:03 22 SPECIFICALLY AND I WILL ALSO REREAD THE DEFENSE RESPONSES, SO

10:40:07 23 IT'S ALL DONE IN CONTEXT, AND I WILL ISSUE A FURTHER RULING ON

10:40:10 24 THAT.

10:40:11 25 MR. KRISHNAMURTHY: THANK YOU.

10:40:11 1 THE COURT: THE SHORT ANSWER TO YOUR QUESTION IS IT

10:40:18 2 MAY VERY WELL BE -- WHY CAN'T WE JUST REDACT THAT LANGUAGE FROM

10:40:23 3 THE COMMUNICATIONS, THE RACIALLY CHARGED EPITHETS, IF YOU WILL?

10:40:28 4 MR. KRISHNAMURTHY: YOUR HONOR, PART OF OUR THEORY IS

10:40:30 5 THAT THE EXTREME LANGUAGE SORT OF CONVEYED THE EXTREME NATURE

10:40:34 6 OF THE DEFENDANT'S INTENT, THE INTENT TO VIOLATE CONSTITUTIONAL

10:40:37 7 RIGHTS.

10:40:38 8 THERE ARE A NUMBER OF COURTS THAT HAVE HELD THAT ABUSIVE

10:40:41 9 LANGUAGE IS PROBATIVE OF THAT INTENT. AND SO WE THINK WHEN

10:40:44 10 THEY ARE DIRECTLY CONNECTING THE CONVERSATION, THEY SHOULD BE

10:40:47 11 ADMITTED, ALTHOUGH WE AGREE WHEN THEY ARE NOT CONNECTED, WE

10:40:50 12 WOULD NOT SEEK TO ADMIT IT.

10:40:51 13 THE COURT: SO MAYBE THE LATTER IS WHAT I WAS

10:40:54 14 FOCUSING ON RATHER THAN THE FORMER, SO I'M GOING TO REREAD THE

10:40:59 15 GOVERNMENT'S PAPERS AS WELL AS THE DEFENSE PAPERS SO I CAN GET

10:41:01 16 BOTH SIDES AND THEN I WILL ISSUE A FINAL RULING ON THAT. THANK

10:41:01 17 YOU FOR BRINGING IT TO THE COURT'S ATTENTION.

10:41:06 18 ANYTHING FURTHER FROM DEFENSE COUNSEL AT THIS POINT? COME

10:41:12 19 ON UP.

10:41:14 20 MS. LOPES: I JUST WANTED TO PUT TO THE COURT'S

10:41:15 21 ATTENTION THAT THE SLIDE SHOW DID NOT HAVE DEFENDANT WENGER'S

10:41:19 22 WITNESSES IN IT.

10:41:19 23 THE COURT: OH, REALLY? OKAY.

10:41:21 24 MS. LOPES: YES.

10:41:21 25 THE COURT: DO WE HAVE THOSE IN SOME DOCKET THAT I

10:41:23 1 CAN --

10:41:24 2 MS. LOPES: YES.

10:41:25 3 THE COURT: WHICH ONE CAN WE LOOK AT?

10:41:27 4 MS. LOPES: THE JOINT STATEMENT OF THE CASE.

10:41:28 5 THE COURT: ALL RIGHT. I WILL DEFINITELY ADD THOSE

10:41:30 6 TO THE SLIDES. THANK YOU VERY MUCH, THAT WAS AN OVERSIGHT ON

10:41:33 7 THE COURT'S PART.

10:41:34 8 MS. LOPES: ALSO MARK LILLIENFELD IS AN INVESTIGATOR,

10:41:36 9 NOT AN ATTORNEY. HE WAS LISTED IN THE SLIDE SHOW AS AN

10:41:39 10 ATTORNEY, SO I JUST WANTED TO MAKE SURE THE COURT WAS AWARE OF

10:41:42 11 THAT.

10:41:42 12 AND THEN LASTLY, WE HAD RAISED AN OBJECTION TO THE SLIDE

10:41:45 13 SHOW AND THE STATEMENT OF CASE. THERE IS A ONE-OFF LINE IN

10:41:49 14 THERE THAT BASICALLY INTIMATES THAT DEVON WENGER HAD FALSIFIED

10:41:53 15 OR FILED MISLEADING POLICE REPORTS, BUT THERE IS NO CHARGES

10:41:58 16 AGAINST HIM FOR THAT. AND THEN BASED ON THE COURT'S RULING IN

10:42:01 17 THE 404'S THIS MORNING, THE ONLY ONE THAT TOUCHED ON THAT HAS

10:42:05 18 NOW BEEN EXCLUDED, SO I JUST WANTED TO BRING THAT TO THE

10:42:09 19 COURT'S ATTENTION AS WELL.

10:42:09 20 THE COURT: ALL RIGHT. BEFORE WE GET TO YOUR NEXT

10:42:12 21 POINT, LET ME ASK THE GOVERNMENT COUNSEL ON THAT, TYPICALLY I

10:42:15 22 LIKE TO HAVE A KIND OF, MAYBE IN AN UNUSUAL CASE LIKE THIS, A

10:42:21 23 KUMBAYA MOMENT WHERE EVERYBODY AGREES, BECAUSE I WANT THE

10:42:24 24 STATEMENT TO BE AS NEUTRAL AS POSSIBLE.

10:42:25 25 CERTAINLY BOTH SIDES ARE FREE TO BRING UP POINTS NOT IN --

10:42:28 1 AND I'M SURE THEY WILL BECAUSE THEY ARE ADVOCATES -- WHAT'S
10:42:32 2 YOUR POSITION ABOUT EXCLUDING THAT LANGUAGE THAT COUNSEL FINDS
10:42:36 3 PROBLEMATIC IN THE STATEMENT OF THE CASE, BECAUSE IT DOES DEAL
10:42:39 4 WITH BOTH THE SLIDE SHOW AND THE VOIR DIRE.

10:42:42 5 MR. KRISHNAMURTHY: I APOLOGIZE. I WASN'T FAMILIAR
10:42:44 6 WITH THAT SPECIFIC OBJECTION, IN FACT I THOUGHT WE DID HAVE
10:42:47 7 AGREEMENT ON THE DESCRIPTION OF THE CASE. THAT MAY BE OUR
10:42:50 8 MISTAKE.

10:42:51 9 THE COURT: WELL NO, NO, NO, LET ME INTERRUPT YOU.

10:42:54 10 COUNSEL IS SAYING THAT BECAUSE OF THE COURT'S IN LIMINE
10:42:56 11 RULINGS, SOME OF THE LANGUAGE MAY NOT BE APPROPRIATE. SO WHY
10:42:59 12 DON'T THE TWO OF YOU, OR I DON'T KNOW HOW MANY THERE, MEET AND
10:43:02 13 CONFER AND TRY TO COME UP WITH SOMETHING AND SUBMIT IT BY THE
10:43:06 14 DAY'S END SO WE CAN GET THAT IN THE CAND.

10:43:09 15 MR. KRISHNAMURTHY: YES, YOUR HONOR.

10:43:09 16 MS. LOPEZ: THANK YOU, YOUR HONOR.

10:43:10 17 THE COURT: ALL RIGHT. SO I WILL DEFINITELY LOOK AT
10:43:11 18 THAT. BECAUSE AGAIN, MY GOAL IS TO MAKE THIS -- IT'S NEVER
10:43:15 19 GOING TO BE PLAIN VANILLA BECAUSE THE GOVERNMENT IS MAKING
10:43:18 20 ALLEGATIONS AGAINST DEFENDANTS, BUT I TRY TO MAKE IT AS NEUTRAL
10:43:21 21 AS POSSIBLE, SINCE I'M READING IT, I DON'T WANT THERE TO BE ANY
10:43:24 22 UNDUE EMPHASIS BEING GIVEN TO EITHER SIDE'S CASE, BUT I WILL DO
10:43:29 23 THAT, THAT'S A GOOD POINT. THANK YOU.

10:43:31 24 ANYTHING FROM MR. GOYETTE OR --

10:43:34 25 MR. GOYETTE: NO, YOUR HONOR.

10:43:35 1 THE COURT: ALL RIGHT.

10:43:36 2 WE WILL SEE YOU AT TRIAL, AND IF THERE ARE ANY CHANGES,

10:43:38 3 LET ME KNOW. BUT PLEASE -- AND BY THE WAY, THE SLIDE SHOW,

10:43:45 4 REALLY THE DISCLOSURE IN THE SLIDE SHOW, THE INTENTION OF IT IS

10:43:49 5 FOR EVERYBODY TO CAPTURE THE NAMES OF EVERYBODY SITTING AT

10:43:53 6 COUNSEL TABLE, INCLUDING COUNSEL, AND INVESTIGATORS,

10:43:57 7 PARALEGALS, ET CETERA. SO I INTEND IT TO BE -- BECAUSE I'VE

10:44:00 8 HAD SITUATIONS WHERE SOMEBODY MIGHT SAY, HEY I KNOW HIM, OR I

10:44:05 9 KNOW HER, AND THAT'S A PROBLEM, SO PLEASE KEEP THAT IN MIND.

10:44:08 10 ALL RIGHT. SO I WOULD EXPECT BY THE END OF THE DAY IF

10:44:10 11 THERE'S -- I WILL LOOK AT MR. WENGER'S WITNESSES AND WE WILL

10:44:14 12 DEFINITELY ADD THAT, AND I WILL LOOK FORWARD TO GETTING BY THE

10:44:16 13 END OF TODAY, THE UPDATED, IF THERE WILL BE SUCH, STATEMENT OF

10:44:23 14 THE CASE.

10:44:24 15 AND I WILL LET YOU KNOW AT SOME POINT AS SOON AS WE KNOW

10:44:28 16 OR HOW MANY PHYSICAL PEOPLE -- PANELISTS WE CAN GET INTO THIS

10:44:35 17 ROOM SO AS TO AVOID HAVING TO -- BECAUSE I READ -- IN ADDITION

10:44:44 18 TO THE SLIDE SHOW, I READ A LITTLE STATEMENT WHICH I CALL THE

10:44:49 19 COURT'S 4TH OF JULY SPEECH WHICH TALKS ABOUT GENERALLY THE

10:44:52 20 HISTORY OF OUR JURY SYSTEM AND THE IMPORTANCE OF JURY DUTY AND

10:44:56 21 JURY SERVICE WHICH IS CALCULATED TO IMPRESS ON THE JURY THE

10:45:03 22 SERIOUSNESS OF THE PROCEEDINGS AND THE IMPORTANCE OF THEIR BOTH

10:45:08 23 SERVICE AND COMPLIANCE WITH THE COURT'S RULES.

10:45:10 24 SO ANYWAY, I WILL SEE YOU AT TRIAL. THANK YOU VERY MUCH,

10:45:13 25 EVERYBODY.

10:45:14 1 THE CLERK: COURT IS ADJOURNED.

10:45:14 2 (THE PROCEEDINGS WERE CONCLUDED AT 10:45 A.M.)

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3 **CERTIFICATE OF REPORTER**
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7 I, THE UNDERSIGNED OFFICIAL COURT REPORTER OF THE
8 UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
9 CALIFORNIA, 280 SOUTH FIRST STREET, SAN JOSE, CALIFORNIA, DO
10 HEREBY CERTIFY:

11 THAT THE FOREGOING TRANSCRIPT, CERTIFICATE
12 INCLUSIVE, IS A CORRECT TRANSCRIPT FROM THE RECORD OF
13 PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

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23

24 SUMMER A. FISHER, CSR, CRR
25 CERTIFICATE NUMBER 13185

26 DATE: 2/17/25